Good public policy demands expedited termination of the broken tort system and preservation of funds so that payments can go to the most worthy claimants, as defined by the consensus medical criteria.

As a final note, proposals for research moneys for mesothelioma were circulated in committee. Mesothelioma victims generally live only a year or so after diagnosis of this horrible disease. More research is needed on mesothelioma to find better treatments and even a cure, and I am pleased this bill addresses this problem.

Our bill now provides up to $50 million—and I am willing to consider increasing that amount—in grants to mesothelioma research and treatment centers. In addition, these centers must be associated with the Department of Veterans Affairs medical centers to provide research benefits and care to veterans who have suffered excessively from mesothelioma. These, along with the asbestos ban, are important and vital pieces of legislation that must not be overlooked.

Again, I tried to highlight here some of the major changes from S. 1125 as reported, many of which were made to address the concerns raised by various members in committee, especially on the Democratic side. These revisions are aimed at ensuring that the program established under the FAIR Act is fair to victims.

In short, the Hatch-Frist-Miller bill represents a reasonable and fair solution to the asbestos litigation crisis and may be the only solution to it. Members from both sides of the aisle recognize that an equitable compensation program is necessary.

I believe S. 2290, the Hatch-Frist-Miller bill, meets the test. I urge all of my colleagues to support this bill and at least support debate on this bill and bring up amendments so we can see what further changes the Senate, in working its will, will require. We should certainly see that this bill is fully considered by the Senate.

Having said all of that, I am very concerned that this bill is being treated only politically; that there are those who are afraid to vote on this matter; that there are those who do not want to be involved in this matter right now; that there are those who want to stop this matter because of political pressure by special interest groups.

We now have 8,400 companies that are being sued, and it may go as high as 15,000. I might add that we have about 16 major insurance companies that are being sued, some of which should not have the liabilities we are imposing upon them. Nevertheless, the more companies that go into bankruptcy, the more jobs are lost, the more pensions are lost, the more this economy will suffer, and the more all of us will be worse off.

I might also add that the courts have not proven to be effective here and that the tort system has failed. Even the Supreme Court of the United States says this requires a legislative solution. This is the only legislative solution that is available, and if we want to get something done, we are going to have to work on this bill.

Personally, rather than have a filibuster on the motion to proceed, I think we should go to the bill. I personally would be willing to grant more time if we would have a definite date. I cannot speak for the majority leader, naturally, but I would personally be willing to grant more time, as Senator SPECTER was, to have further negotiations outside the context of debate on the bill where usually those negotiations help bring about a bill. But I would be willing to go another 2 weeks to a month in intensive 9 to 6 negotiations every day, which we have been doing now for 8 months, if we had a definite time to bring up amendments and a definite time for final passage of the bill or a final vote on the bill. Maybe we will vote it down in the end. I doubt it. In fact, I am sure we will not.

The fact is, in other words, if we do not have to face another filibuster and if everybody in good faith works to try to bring this about and we have a debate on the floor and people have amendments they want to bring up, they can do it. I cannot speak for the majority leader, but I certainly would be willing to recommend that, again bending over backwards to try to accommodate our colleagues on the other side.

If that is not acceptable, then I have to conclude that the statements made by some of the folks outside of the Senate who are knowledgeable about this that politics is more important than solving this problem, that money is more important than solving this problem, that the personal injury lawyers are more important than solving this problem happens to be true. I hope that is not true. I hope we can get our colleagues to work together. I would like to work with them, as we have. We have not rejected or failed to consider any idea that has come up, and we will continue to do so. But if not, then let's go to cloture on this bill and let's let everybody know who wants to stop even a reasonable debate, even a reasonable time to file amendments, even the reasonable position the Senate ought to always take, and that is the Senate should work its will and we should vote on the amendments one way or the other, vote on this bill one way or the other, and let the chips fall where they may.

Mr. President, I yield the floor.

Mr. LEAHY. Mr. President, will the Senator withhold?

Mr. HATCH. I will be happy to.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, is the parliamentary situation that we are going to recess for the party caucuses at 12:30 p.m.?

The PRESIDING OFFICER. The Senator is correct, until the hour of 2:15 p.m.

Mr. LEAHY. Mr. President, I ask unanimous consent that I be recognized at 2:15 p.m. to speak on the asbestos legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LEAHY. I thank the Chair.

## RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate stands in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:28 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. VOINOVICH).

The PRESIDING OFFICER. The Senator from Vermont.

## FAIRNESS IN ASBESTOS INJURY RESOLUTION ACT OF 2004—MOTION TO PROCEED—Continued

Mr. LEAHY. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The Senate is on a motion to proceed to S. 2290.

Mr. LEAHY. Before we recessed, was there a unanimous consent request made for the Senator from Vermont to be recognized?

The PRESIDING OFFICER. The order is the Senator from Vermont be recognized.

Mr. LEAHY. That was without any time limitations, as I recall?

The PRESIDING OFFICER. That is correct.

Mr. LEAHY. I thank the distinguished Presiding Officer, my good friend from Ohio.

## DIVERSION OF FUNDS FOR MILITARY OPERATIONS IN IRAQ

Mr. LEAHY. Mr. President, I want to take a moment to respond to the very serious allegations contained in Bob Woodward's book about the use of counterterrorism funds to support preparations for the U.S. military invasion of Iraq.

As a Senator and a taxpayer, I am very troubled by this information. The Constitution gives Congress the sole power of the purse. The Founding Fathers did this for good reason. It is a responsibility that I take very seriously.

As a member of the Appropriations Committee for more than two decades, I know there is a long, bipartisan tradition of administrations—of both political parties—informing Congress when money is going to be used for purposes different than what it was intended for, especially if it is part of a major change of policy.

We do not yet know all of the facts, and we need to get the whole story as soon as possible. But I will say that in the wake of September 11, the Congress moved very quickly in a bipartisan way to appropriate billions of dollars to respond to the threat of international terrorism.

In doing so, we gave the administration a great deal of flexibility, but we also made clear that we expected the administration to keep the Congress informed on the use of these funds. And administration officials gave us their word that they would keep us informed.

We now learn, as a result of Bob Woodward's book, that millions of dollars that we thought we were appropriating for Afghanistan, or to respond to other terrorist threats, may have been used by the Defense Department to begin preparations for the invasion of Iraq.

The problem is that there is not a shred of evidence linking Saddam Hussein to the September 11 attacks. Even the President has acknowledged this.

In effect, it appears that the administration has treated the Congress with much the same disdain as it treated our European allies. Remember? They were the ''old Europe,'' who were out of touch, whose support we did not need. Like the United Nations, they were ''irrelevant.''

So too the Congress: What do they know? They just appropriate money. They do not need to know what it is being used for.

We also have learned, in even more detail, how this administration rushed into war without making adequate post-war plans or building a real international coalition. As a result, the reconstruction efforts are a mess, our credibility is in tatters, and America's soldiers are shouldering a grossly disproportionate share of the burden and the casualties.

The proper use of taxpayers' money is not a Democratic or a Republican issue. As representatives of the American people, it is something that we should all be concerned about, and it may force us to change the way we do business around here.

Mr. President, we also have before us an asbestos bill, the Asbestos Injury Resolution Act of 2004. This partisan asbestos bill is not ready for floor consideration. It is not ready for prime time, not by a long shot. I do believe the Senate should pass legislation to establish a national trust fund to fairly compensate asbestos victims. After all, I held the first hearing ever held by the full Senate Judiciary Committee in an effort to get a resolution to the problem facing victims of asbestos poisoning. But, despite the title of this bill, it is far from fair. It is very partisan. This partisan bill creates a trust fund that provides unfair compensation for asbestos victims. This partisan bill creates a trust fund with inadequate funding, no startup protections, and major solvency problems. This partisan bill contains a warped sunset provision that could trap victims in a failed trust fund for 7 years or more without having access to compensation.

Look at this chart. This fund says victims could be trapped in a failed trust fund for 7 years or more and would have no compensation. If the fund becomes insolvent, then the Hatch-Frist substitute provides for a reversion to the tort system, but only after 7 years from when the fund begins processing claims, and then only in Federal court, and then only for some limited disease categories. So victims could be trapped for 7 years or more with no compensation. That is not fair.

Some have claimed this bill provides for contingency funding to try to address the many uncertainties of future projections for asbestos victims, but the $10 billion for continued funding only kicks in after year 2023 and only if the funds still exist at this time. Let me show you on this chart. It is only after year 2023. We are in the year 2004. There will be very few in the Senate who will still be around to try to correct the mischief of this bill. You have contingency funding available after 2023. That means a lot will not be available to pay the pending 300,000 claims on day one. That is not a fair trust fund.

So I would say it is a mistake for the Republican leadership of the Senate to insist on proceeding to a bill and have so many major problems still unresolved. The bill is not ready for prime time. Let's work at making it ready, not work at scoring partisan points. Let's do something for the victims of asbestos.

Creating a fair national trust fund to compensate asbestos victims is one of the most complex legislative situations I have seen in 29 years in the Senate. The interrelated aspects necessary for a fair national trust fund is like a child's Rubik's Cube. So it is all the more necessary that a bill be a consensus piece of legislation for it to become law. I am not looking for a Democratic or Republican piece of legislation; I am looking for a bipartisan one that would work. That is why I worked so hard in months of bipartisan negotiation, why I worked so hard to encourage the interested stakeholders to reach agreement on all the critical details. I have had so many meetings in my office and in other Senators' offices with the major stakeholders across-the-board, and this is where we are. We have Senator HATCH and the majority leader introducing a partisan asbestos bill.

I hoped the bipartisan dialog over the past year would yield a fair and efficient compensation system that we could in good conscience offer to those suffering today from asbestos-related diseases and to the victims yet to come. Our leader, the senior Senator from South Dakota, Senator DASCHLE, was entrusted by all of us to speak for our caucus and to try to negotiate an agreement. Time and again he made that attempt. Time and again he was put off.

I stood there with him when he spoke to the leadership on the Republican side saying, Can't we get together on a piece of legislation? But unfortunately the Senate majority leadership decided to walk away from those negotiations and resort to unilateralism by introducing a partisan bill without Democratic support. That is a shame. They ought to pull this bill and sit down with Senator DASCHLE, knowing Senator DASCHLE will go to the table and negotiate a real bill, because the introduction of this bill raises many questions, most notably what the sponsors are trying to achieve, because it certainly is not a fair compensation model for asbestos victims. By breaking off bipartisan negotiations and pushing this bill to the floor, they have turned their backs on those of us who have worked so long for a fair solution.

I was encouraged to learn this week from a news wire report that a colleague, the senior Senator from Pennsylvania, Senator SPECTER, who played an important role in the negotiations, favored resumption of negotiations. Senator SPECTER told the Associated Press:

> I declined to join with Senator FRIST and Senator HATCH in their substitute bill because I think it is the better practice to try to work through these problems. Senator SPECTER, of course, has put in untold hours with retired distinguished Judge Becker in trying to work through the points of such a bill.

We have all learned a great deal about the harms caused by asbestos exposure since that first hearing that convened in September of 2002. Asbestos is the most lethal substance ever widely used in the workplace. Between 1940, the year I was born, and 1980, more than 27.5 million workers in this country were exposed to asbestos on the job and nearly 19 million of them had high levels of exposure over long periods of time. Unbelievably, asbestos is still used today.

What we face is an asbestos-induced disease crisis. Hundreds of thousands of workers and their families have suffered debilitating disease and death due to asbestos exposure. The disease and the death are among the most horrible ways of being sickened or to die. These are the real victims of the nightmare and they must be the first and foremost focus of our concern and effort. These are people who, simply by showing up for work and doing their job as they are supposed to, endured lives of extreme pain and suffering.

Not only do they continue to suffer, and their number will grow, but the businesses involved in the litigation, along with their employees and their retirees, are suffering from the economic uncertainty created by the situation.

More than 60 companies have filed for bankruptcy because of their asbestos-related liabilities. These 60 bankruptcies have a devastating human economic effect. Asbestos victims deserving fair compensation do not receive it and bankrupt companies do not create new jobs or invest in our economy.

In working with Senators DASCHLE, DODD, FRIST, HATCH, and SPECTER, we encouraged representatives from organized labor, the trial bar, and industry

help reach consensus on a national trust fund to compensate asbestos victims. We wanted to give financial certainty also for the defendants and their insurers.

Now a successful trust fund—by that, I mean one that would provide fair and adequate compensation to all victims—would bring reasonable financial certainty to defendant companies and their insurers. To be successful, it has to have four essential components. It has to have appropriate medical criteria, it has to have fair award values, adequate funding, and an efficient, expedited system for processing claims.

During the markup session of the Judiciary Committee on the first FAIR Act, we unanimously adopted the Leahy-Hatch amendment on medical criteria. This created 10 categories of disease. The medical criteria represent bipartisan agreement the national trust fund should provide monetary compensation to claimants who suffered impairment and it should provide medical monitoring to those individuals with less serious asbestos-related conditions. The bipartisan medical criteria are in this new bill. I agree with them.

During the mediation process established by Senator SPECTER and Judge Becker—I referred to him earlier as Judge Edward Becker, retired chief judge for the United States Third Circuit Court of Appeals—the interested stakeholders tried to craft a streamlined administrative process. Senator SPECTER and Judge Becker worked very hard on this process. They deserve the thanks of all Members. I believe their very inclusive process was crucial to the establishment of a national trust fund at the Department of Labor.

Even that agreement, the agreement between the interested stakeholders, left many details unresolved. In fact, as this chart shows, Judge Becker listed 22 outstanding issues. Many involved administrative process. That list of 22 outstanding issues did not include the 2 other major components of a fair trust fund: fair award values and adequate funding to pay for it. These are the remaining issues.

We cannot zip to the Senate floor and because we could not find anything else to do, we bring it up. There are many issues, including startup language, sunset time, timeframe, reversion to tort system, in what forum, pending cases, settlements in pending cases, treatment of existing trusts, worker's compensation, medical screening of high-risk workers, transparencies, setoff rules, statute of limitation language, exclusive default judgments, bankruptcies, FELA, exclusivity for asbestos-related claims, and on and on.

I mention this because this is a highly complex area. Simply putting something on the Senate calendar to say we put something on the Senate calendar is a lot different than actually being legislators and trying to pass something. What we want is a decent piece of legislation, not a headline. The people who are suffering from asbestos-induced injuries and illness are not helped by a headline. They are helped by real legislation which requires real Senators doing—guess what—real work.

The changes made to a few award values by Majority Leader FRIST moved in the right direction. His partisan bill does not move far enough toward providing fair compensation to all impaired victims of asbestos exposure. In fact, seriously ill victims of exposure would receive significantly less compensation on average under the current version of this act than they would in the tort system. The so-called FAIR Act is not yet fair.

The gravest injustice to the bill is to lung cancer victims. A victim with at least 15 years of asbestos exposure could receive only $25,000 in compensation for his or her asbestos-related disease under the new bill. Goodness gracious. I ask any Member of this committee, if somebody's negligence caused them to have lung cancer, would they feel satisfied with a $25,000 award? I don't have to poll the other 99 Senators. I know it would be a resounding no. Don't do it to the victims of asbestos just because they do not serve in the Senate.

My chart underscores the fairness of the award value for asbestos-related lung cancer victims compared to compensation available in the tort system and under the proposal offered by Senator KENNEDY and myself during the committee markup.

The legislation we are considering today provides as little as $25,000 in compensation for victims suffering asbestos-related lung cancer. What a cruel joke on these lung cancer victims, especially those who are going to die within the next 2 years. What a cruel joke on their families who see this as the punishment because the breadwinner in their family went to work every day in one of these industries.

When there is smoking and asbestos combined, the likelihood of the resulting disease is greater than the sum of the parts.

Dr. Laura Welch is a well-respected medical expert who helped us craft medical criteria which was accepted by an overwhelming bipartisan majority in the committee. She said:

> Smoking and asbestos act in concert together to cause lung cancer, each multiplying the risk conferred by the other.

There is a synergistic relationship between asbestos exposure and smoking. Smokers who meet the bill's exposure requirements face a risk of lung cancer that is up to five times greater than smokers not exposed to asbestos. But they receive only $25,000 under this bill.

In other words, if you go to work at W.R. Grace or Halliburton or some of the other companies that are getting a real, real big deal under this bill, and they say, ''OK, guys and gals, you can take a 10-minute cigarette break,'' if they are foolish enough to do it, that combination of asbestos and smoking—at whatever company it might be; I picked W.R. Grace and Halliburton only because they benefit so greatly under the bill; others do, too—then their risk is much greater, and then they may have their awards reduced or even eliminated to repay any insurance carrier.

Now, that is a lot different than what happens now. Usually, under these programs, you do not have to repay your insurance carrier, you do not have to repay workman's compensation. Under the Radiation Exposure Compensation Act, you do not have to do that. Under the Energy Employees Occupational Illness Compensation Program Act, you do not have to do that. Under the Ricky Ray Hemophiliac Relief Fund Act, you do not have to do that.

But what bothers me is that when we made the medical criteria, we got a bipartisan consensus on the medical criteria. We did it in a way to guarantee that we were eliminating what were the most troublesome claims. We were setting a roadmap on which business and everybody else agreed. We all say we need to compensate the truly sick, but fair compensation is not free.

The Judiciary Committee's bipartisan agreement on medical criteria will be meaningless if the majority, in effect, rewrites the categories by failing to fairly compensate many who fall within them. You cannot come to the floor and say, look, you have Republicans and Democrats who came together and worked out the medical criteria that they are all very happy about—and we met with labor, and we met with businesses, and we met with insurers, we met with the victims themselves, and we worked out a fair medical criteria—and then come to the floor and say, see, we worked it all out. However, we made one little change. And what is the little change? The little change is to take away all the money or much of the money that was going to pay these victims.

If the award values are unfair, the bill will be unfair. And if the bill is unfair, it is unworthy of our support. In this case, with this partisan bill, it is unfair. It is unworthy of the support of Senators.

Since the first hearing, the hearing I held, we have had one bedrock principle: It has to be a balanced solution. Whatever solution we have, it has to be balanced. I cannot support a bill that gives inadequate compensation to victims. I will not adjust fair award values into some discounted amount just to make the final tally come within a predetermined and artificial limit. That is not fair, and I will not vote for a bill that is not fair. Remember, we are taking away people's most cherished right, the right of a jury trial. If we are going to do that, we cannot do it in a bill that is not fair.

Now, my friends on the other side of the aisle have insisted for months they will only support a bill that contains

funding with a goal of raising $109 billion over 24 years. But it is very clear from projections of future claims that this funding is inadequate to pay fair award values. You cannot have good legislation, successful legislation, fair legislation if it is based on a false promise. The promise we have to make is, if we are going to take away the rights of a jury trial to these victims, then we have to promise them fair compensation. This bill does not do that.

On the Judiciary Committee, we reported a bill that contained total funding of $153 billion. But this new partisan bill, introduced less than 2 weeks ago, contains mandatory funding of only $109 billion. All of a sudden, we have lost—we have lost—over $40 billion from the total funding approved by the Judiciary Committee under contingency funding amendments by Senators FEINSTEIN and KOHL.

Senator FEINSTEIN—she can speak for herself; she is in the Chamber—but she worked night and day on this issue to get a fair agreement. I do not know the number of times she buttonholed me at the committee or elsewhere, and every other Senator on both sides of the aisle, to reach an agreement; and she got it. That has been taken out.

Look at this chart. Is this fair? We reported a bill, which many questioned whether it had enough money, S. 1125, at $153 billion. Now it comes back and it is $109 billion. The first bill, many complained, did not have enough money; the current bill drops $44 billion out.

We also know there has to be adequate funding at the beginning of a national trust fund. Why? There are more than 300,000 asbestos claims in our current legal system, so you are going to have to have enough money in there to handle the claims that are going to be there on day 1 of this fund. However, this new bill actually provides less upfront funding than the bill reported by the Judiciary Committee.

It strikes what we passed in the committee, by bipartisan majorities, a commonsense requirement that directs insurers—who, after all, have billions of dollars sitting today in current asbestos reserves—to contribute their funding within the first 3 years of the fund because that is when most of the claims would come.

Another fundamental unfairness in this bill is it provides a corporate bailout for certain companies with serious asbestos liability.

Take a look at another chart. I ask if this is fair. The present value of Halliburton's asbestos liability is $4.8 billion. Under this bill, they would only pay $75 million a year to a national trust fund. The reason I mention this is Halliburton told their shareholders sometime ago they could handle this $4.8 billion, they could handle the amount of money set aside for their liability. They knew they were liable. They knew they would have to pay for it. They could set this money aside. In fact, when they thought they had a settlement of that amount, their stock actually went up.

But, lo and behold, by the time the Republican majority got the amount Halliburton would owe—the $4.8 billion—by the time our friends on the Republican side of the aisle got it, they only have to pay $1.2 billion. They saved $3.6 billion overnight. Not only that, they only had to pay it over 24 years. They are going to make that on the interest on their money. I am not even going to point out how much money they are making in profits in Iraq at the moment. I will leave that for another day. But they suddenly go from the $4.8 billion that basically they knew they were going to have to pay, and as soon as this Republican bill came up, it is down to $1.2 billion. No wonder Halliburton likes some of my friends on the other side of the aisle.

Let's take W.R. Grace, another good friend of some of my friends on the other side of the aisle. W.R. Grace was a company that was responsible for poisoning an entire community. Some of these companies only poison a few hundred or 200 or so of their employees when they come to work. They only poison a few hundred by hiding what they are doing. W.R. Grace goes big time, to quote one of the people they support.

W.R. Grace was responsible for poisoning an entire community, the whole community, whether you worked for them or not. They poisoned the whole community from its asbestos mining facilities in Libby, MT. W.R. Grace must love their Republican friends because while they had total asbestos liabilities of about $3.1 billion, under this bill they suddenly have to only make payments of $27 million over 24 years, which is pocket change for them. Instead of paying the $3.1 billion they are liable for today, they will pay only $424 million. No wonder they love Republicans. I mean, this is a walkaway.

And the irony is, with a straight face there are those who call this the FAIR Act. I am sure they probably call it the FAIR Act at the board of directors of W.R. Grace. I am sure they call it the FAIR Act at the board of Halliburton. But I can tell you, in the families where they see the breadwinner with the oxygen tank suffering, coughing up blood, suffering a horrible death, they don't call it the FAIR Act. They might call it the Halliburton Relief Act. They might call it the W.R. Grace Relief Act. They don't call it the FAIR Act.

As presently written, the FAIR Act would completely negate all legally binding settlement agreements between asbestos defendants and victims. It would take away their right to the courthouse. Even settlements that have already been partially paid, even those settlements—whether it is W.R. Grace or Halliburton, anybody else—where they have agreed they are liable, where they have started to make payments, all of a sudden comes the FAIR Act, and it is like Christmas in April because they can void those agreements even though they have been making payments.

In other words, if a victim agreed to take a settlement over a period of time from a defendant in return for dismissing the case, and even though that settlement agreement is an enforceable contract, the defendant, whether it is Halliburton or W.R. Grace or anybody else, gets the right to walk away.

Victims are actually punished under this legislation for agreeing to settlement terms proposed by asbestos defendants. Is that fair? Absolutely not.

In addition, the FAIR Act would retroactively extinguish all pending asbestos cases regardless of the stage in the litigation. The asbestos cases currently in trial or on the verge of trial would immediately be brought to a halt. Cases with jury verdicts or judgments would end, and all appeals would be suspended. Is that fair? No. It is not fair to the victims. It might be fair to W.R. Grace or Halliburton; it is not fair to the victims at home coughing out their lungs.

The partisan emphasis in this bill on behalf of the interests of the industrial and insurance companies involved, to the detriment of the victims, has predictably produced an imbalanced bill. This bill is a reflection of the priorities that went into it. Remember, many of us wanted to bring certitude to the companies, to bring fair compensation to the victims. Instead, this is totally skewed.

For us to succeed in reaching the consensus solution we sought for so long, a workable bill should fairly reflect and not discount the significant benefits that a fair solution would confer on the companies involved. A trust fund solution would offer these firms reasonable financial security. Even a casual glance at the way the stock values of these firms have closely tracked the Senate's work on this issue are enough to make it crystal clear.

I think forcing this new asbestos bill through the Senate would prove counterproductive, even fatal, to the legislative effort. The near party-line vote within the committee on the earlier bill was more of a setback than a step forward. Proceeding further without consensus would make it worse.

Many of us have worked very hard. Senator DASCHLE has worked extremely hard. Many of us have worked very hard for more than a year toward the goal of a consensus asbestos bill. This new partisan bill is especially saddening to me, and it is confounding. The obvious question that all of us, including those who brought this new bill to the floor, should be asking is, Does the partisan turn that the sponsors of this bill have taken help or hurt our efforts to produce and enact a consensus bill? I think the answer is clear.

Instead of writing a bill that will make Halliburton and W.R. Grace very happy with some in this partisan exercise, let's restart our work to achieve

the common ground needed to enact a good and fair law. That is the best way to move it forward. Remember, we are not legislating as an arm of Halliburton or W.R. Grace or a few others. We are legislating for the good of this country. The 100 of us represent 280 million Americans. We want to be fair. Let's represent them.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the ranking member for his comments, most of which—I think all of which I agree with.

Mr. HATCH. Will the Senator yield for a unanimous consent request?

Mrs. FEINSTEIN. Yes, of course.

Mr. HATCH. I ask unanimous consent that I be recognized immediately following the distinguished Senator from California.

Mr. REID. Reserving the right to object, does the distinguished chairman of the Judiciary Committee know approximately how long he might speak when he does get the floor?

Mr. HATCH. I think it would be less than a half hour.

Mr. REID. We want to let other people come and speak. So it does not matter how long he speaks, just so we have some general idea. I withdraw the reservation of objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mrs. FEINSTEIN. Mr. President, as a member of the Judiciary Committee who voted for the bill in committee and worked out two amendments that are substantial, I regretfully rise to urge my colleagues to vote no on cloture on the motion to proceed to this bill. In the course of my remarks, what I hope to do is indicate my reasons for opposing cloture and make some positive suggestions as to how to close the gap on the unresolved issues.

There are only two ways to get a bill on asbestos. I say this to everybody out there who has a legitimate concern and need for a bill. That is, one, unless the two leaders agree or, two, a bill that goes back to the Judiciary Committee and is worked out as a product of that committee's work.

Last July, nearly 9 months ago, the Judiciary Committee passed out a comprehensive asbestos bill. We deliberated and had hearings over several years.

The bill wasn't perfect, but it reflected a substantial step forward in crafting a legislative compromise. A few issues were unresolved. They were to be worked out by members in the intervening time. Since July, labor representatives, defendant companies, insurers, and others have engaged in multilateral negotiations, not only to settle these few unresolved issues, but to renegotiate the entire bill.

The legislation proposed by Senator HATCH, the distinguished chairman of our committee, and Senator FRIST, the distinguished majority leader, actually sets the debate backward by taking positions directly contradictory to the will of the majority of the Judiciary Committee. It is a substantially different bill that is on the Senate floor today than was the bill that I voted for in committee.

I don't believe the bill is ready for the floor and I hope to technically explain why. In fact, I have written the chairman of the Judiciary Committee requesting that the bill be returned to committee for future deliberations. We, the Senators serving on that committee, did do our job, and we should be allowed to finish that job and work through the issues necessary to forge a bill that can pass in this body.

Let me explain my concerns. Specifically, the bill Senator FRIST proposes to bring to the Senate floor eliminates a crucial startup amendment that guaranteed asbestos victims would continue to have their legal rights until the Trust Fund is fully operational. This was a major deletion. It will cost the Trust Fund an additional $5 billion.

Let me read to you from the CBO letter on that point, which is dated today and sent to Senator NICKLES. ''You''—meaning Senator NICKLES—''also requested that CBO explain the major differences between our cost estimates for S. 1125''—that is the bill that came out of committee—''and S. 2290''—that is the Hatch-Frist bill on the floor. ''On March 24, 2004, in a letter to Senator HATCH, CBO updated its October 2, 2003, cost estimate for S. 1125, principally to reflect new projections about the rate of future inflation, and it assumed a later enactment date for the bill. That letter explains that we now estimate enactment of S. 1125 at the end of fiscal year 2004 would result in claims payments totaling $123 billion over the lifetime of the asbestos fund (about 50 years).''

The bill that came out of committee was originally projected to cost $108 billion. An amendment I made put in a contingency reserve of $45 billion in case more money was needed. What this CBO letter shows is that money would, in fact, be needed. CBO's projections indicate that a $10 billion contingency fund would not be enough to cover the cost. That is major in scope.

The bill we are considering today would cost, according to CBO, $17 billion more than the Committee passed bill. Eleven billion of this increase comes from higher awards values.

Five billion of that $17 billion increase is due to the elimination of my startup amendment. Here is why it costs $5 billion. The startup amendment guarantees that asbestos victims would continue to have their legal rights until the Trust Fund is operational. In other words, they could go to court until the Trust Fund was fully operational. CBO estimates that the Fund would save $5 billion by allowing the private settlement of these claims during this start-up period. That is the implication of eliminating the Feinstein startup amendment made in the Judiciary Committee.

Secondly, the Hatch-Frist bill, as I have said, reduces the asbestos victims' trust fund's contingent reserve from $45 billion to $10 billion. The reason for the original $45 billion contingent reserve was to ensure the solvency of the Trust Fund if the estimates are wrong. If the reserve is not necessary, it is not used. But if it is necessary, it is there. I have already shown you by this CBO letter that it would likely be necessary. CBO predicts that the $108 billion bill we passed last July would actually costs $123 billion because of revised projections. Thus, at the get-go, CBO predicts the Trust would need an additional $15 billion, which is already greater than the $10 billion reserve in the new bill. So why pass a bill that, at its beginning, is not going to have adequate funds?

Thirdly, this bill wipes out final asbestos settlements and trial court judgments granting victims awards. This was one of the points that was left hanging when we passed it out of committee, and the members were supposed to get together and solve this. Well, the members—at least this member—didn't get together. But I gather a judge and one member did get together and, up to this point, there is no solution. The bill before us simply says to everybody that has a trial court judgment that that judgment is wiped out. That is wrong.

This bill also prevents individuals from returning to the tort system for 7 years after the administrator starts processing the claims, even if the trust fund goes bust in its first years of operation.

In contrast, the bill we passed out of committee said that if there is not adequate money, individuals could revert to the tort system at any time.

Now, I am not going to vote for cloture, but I recognize that 18.8 million U.S. workers were exposed to asbestos between 1940 and 1979. The best way to look at asbestos is tiny spears, smaller than grains of sand, that lodge in your lungs, guts, stomach, and, over a period of time, in your organs. It is bad stuff and it ought to be prohibited. This bill ought to prohibit it, for starters.

Our courts are overloaded with claims arising from these exposures. Individuals have brought more than a half million asbestos suits over the last 20 years against 8,400 companies. Approximately 71 companies have filed for bankruptcy due to asbestos lawsuits.

Moreover, the current system doesn't ensure compensation for the sickest victims. Currently, nonmalignant cases get 65 percent of the compensation awards, compared to 17 percent for mesothelioma, and 18 percent for other causes. That is wrong on its face.

As this tidal wave of asbestos cases goes forward, serious questions remain whether existing victims will ever receive the compensation they deserve. For example, because of the extraordinary influx of claims, the Manville trust is only paying 5 cents on the dollar.

So I am one who believes we need a comprehensive solution to the asbestos crisis so that victims who are truly sick get compensated in a timely and fair manner.

I recognize negotiations over the asbestos bill have proceeded at a pace that is satisfying no one, and to advance the debate, I would like to ask the Senate to consider the following core proposals, and let me mention what they are.

The fund must be fiscally prudent. Clearly, it has to have a contingent fund of more than $15 billion. Whether that fund is $20 billion or $25 billion or $30 billion, I think we need to go back in the Judiciary Committee and work the values versus the other provisions in the bill. I showed how eliminating my startup amendment cost the fund $5 billion. That is not my analysis. That is the CBO analysis.

Second, the risk of a delay in the start of a national asbestos trust fund should not be borne by asbestos victims. What do I mean by that? I pointed out the bill eliminates the startup I authored in committee that permitted asbestos claimants to pursue asbestos claims in court until the administrator of the trust fund certifies the fund is fully operational.

The reason this amendment is so necessary is to protect the legal rights of plaintiffs, and it should be restored. Without it, asbestos victims could be left without any recourse if there is a delay in starting up the fund. Under this bill, they cannot go to court. So if the money is not there right upfront or the money is short upfront, they are out in the cold.

The amendment I offered serves as a hammer to get defendant companies and insurers to cooperate with the new trust administrator. And for the third time, I point out, it saves $5 billion, according to the CBO.

I recognize the concern of some in the industry that asbestos claimants who are not yet ill will use the interim period to press a host of lawsuits against defendant companies. To address this, I would like to propose modifying the Feinstein amendment to allow a 6-month stay on asbestos claims upon enactment, except for those claimants facing life-threatening, asbestos-related illness. Thus, the stay would only apply to those who are not ill. I think that is a way out of the problem. For those who are ill, there would be no stay.

Thirdly, I would like to suggest if claims exceed projections and the trust runs out of money, plaintiffs should have immediate access to the tort system in both State and Federal court. The current proposal on the floor would prevent victims from filing claims for 7 years after the trust starts processing them, even if the trust expires in the first or second year of operation. We cannot leave victims in this kind of legal purgatory.

So to address legitimate concerns by defendant companies about forum shopping, I would also like to propose plaintiffs who return to court, if the trust fund collapses, would only be able to file as a member of a class or as an individual in State court jurisdictions where they were exposed or where they currently reside. This would handle the great bulk of forum shopping, if you think about it.

Fourth, I would like to suggest award values should have a sliding scale in order to reflect the individual circumstances of victims. The current asbestos bill applies a one-size-fits-all solution to asbestos awards. An 83-year-old asbestos victim without dependents and a 37-year-old single mother with three small children would both receive $1 million for mesothelioma under the bill, but if we look at the awards given by asbestos trusts, such as the Western MacArthur trust, individual circumstances are definitely taken into account.

For example, mesothelioma victims, under that trust, can receive between $52,000 and $4 million, with an average value of $524,000 in this particular Western MacArthur trust. This sliding scale brings fairness to individual victims' awards. It works in this trust.

I have talked with the managers of the trust. They believe this half-a-million-dollar average takes care of the younger victims and balances that in a fair way against older victims.

Fifth, award values for the trust should be set in a way that prioritizes compensation for the sickest victims whose illnesses can clearly be traced to asbestos. This is the hobgoblin of this whole thing. All of the companies I have spoken to are concerned the trust will be abused, and it will be abused in this way: that smokers would have access without the defined connection to asbestos. Specifically, I think we should not allow the asbestos trust fund to be overwhelmed by smoking claims. This is a deep and valid concern.

In the committee-passed bill—and I want to speak to it—awards in category 7 of the medical values raise the largest specter of uncertainty in terms of smoking claims. This category grants awards to smokers with lung cancer with 15 years of weighted exposure to asbestos but no obvious evidence of asbestos disease, such as pleural plaques or asbestosis.

To prevent these claims from overwhelming the trust resources, I propose title VII, smoking cases, revert to the tort system, both State and Federal court, if the administrator determines at the year-end review that the incidence rates of those smoking claims will exceed projections by greater than 50 percent.

Why do I say that? The tort system historically has been able to handle those cases. So it seems to me if there is a smoking case and it shows neither the evidence of asbestos disease, such as pleural plaques or asbestosis, let a court make that decision. This would deter smokers from misusing the trust fund for illnesses caused by smoking rather than asbestos.

This is the most difficult part of the bill. In all of the medical values and all of the hearings and the medical testimony we heard back and forth, it is clear there is a difficult line of definition here, and that is why the trust fund, which is supposed to be a kind of no-fault fund where a medical valuation can be made quickly and scientifically, may not always be able to make that valuation.

So if the fund is going to be overburdened by smoking cases and the administrator at the end of the year says, Look, we are not going to be able to make next year, he can then file in that year-end review with the Congress the request that those cases go to court.

We would give him that authority. I believe this is a solution to that problem. I am not wed to it, but to my knowledge it is the only one that anyone has come up with so far.

Six, a fair asbestos bill must exempt from the trust fund final settlements as well as trial court verdicts that compensate victims. The Hatch-Frist bill fails to do this. Specifically, the bill would overturn any final settlement that ''requires future performance by any party.'' Thus, if an individual received a $½ million award 5 years ago to be paid in 10 annual installments, this bill would wipe out the last 5 installments.

Of equal concern, the Hatch-Frist bill would wipe out lawsuits unless they were ''no longer subject to any appeal or judicial review before the day of enactment of the act.'' In other words, this bill would erase any trial verdict favorable to plaintiffs still on appeal.

We should not undermine a litigant's reasonable expectation that he or she can pursue a favorable trial court verdict to its conclusion.

I am also concerned the bill would overturn the final bankruptcy settlements that have formed the $2.1 billion Western Mac Arthur trust. Award recipients of Western Mac Arthur, 90 percent of whom are Californians, include 8,000 claimants who will be paid hundreds of millions of dollars in a very few weeks. The Mac Arthur trust has also set aside funds for 30,000 future claimants. All of this money is taken by this bill and put in the national fund. So this final bankruptcy trust is totally wiped out and 8,000 individuals who are going to be paid in a matter of weeks lose their settlements. It is just not right.

Unlike some other settlements, the Mac Arthur trust places priorities on the sickest patients. A minimum of 80 percent of the awards paid out under the trust goes to asbestos cancer victims. These awards will be based on historical rates of asbestosis awards in California, which are higher than the rest of the nation.

According to attorneys involved with the Mac Arthur trust, almost every present claimant expecting payment

under the Mac Arthur trust will do worse under the Hatch bill than under the trust because of the Hatch bill's requirement that collateral sources of compensation be subtracted from any award.

Remember, this trust is not the only defendant for many of these plaintiffs. Many of the claimants have cases against other defendants and those are all wiped out as well.

Now, I have policy concerns about wiping out the settlements and the fairness, but it is an open question as to whether such a transfer of assets is constitutional. Let me speak about that for a moment. Legal scholars such as Harvard law professor Elizabeth Warren have argued that the bill's expropriation of money from settlement trusts would violate the takings clause of the U.S. Constitution, which prohibits the taking of ''private property . . . for public use, without just compensation.''

Specifically, there are a number of individuals with a confirmed court order allocating money to them who will have these awards taken away without receiving comparable compensation from the national trust fund. If I have ever heard of a takings case, that is it.

Additionally, the Mac Arthur trust, which is an independent legal entity in its own right, may have a takings claim if its assets are transferred to a national fund without receiving comparable assets in return.

Renowned legal scholar Laurence Tribe takes an opposing view and argues that the conversion of trust assets would be constitutionally permissible. The ultimate outcome of this debate is unknown. But it is clear that the trustees managing the Fuller-Austin and other asbestos trusts have indicated they will file constitutional challenges against the proposed legislation as soon as it is enacted unless changes are made.

I will read from a letter dated July 2, 2003, to me from the Fuller-Austin asbestos settlement trust:

Passage of this legislation undoubtedly will set-off a firestorm of litigation challenging its constitutionality. The Trustees' present view is that their mandates under the Fuller-Austin Trust agreement and the Fuller-Austin plan of reorganization would require them to file litigation to challenge the taking of the Trust's assets and the violation of the rights of its claimants. Other existing trusts doubtless will reach the same conclusion. The resulting litigation will likely take years to resolve. In addition, it will take years to establish the claims handling facility mandated by the bill and for that entity to become operational.

We have $4 billion in this fund from bankruptcy trusts, and $2.1 billion additional dollars from the Western Mac Arthur trust. So that tells us something about how this bill is going to start up and whether the money is actually going to be there to pay the people.

In this bill, the people lose their right to go to court. It is a little bit diabolical if one thinks about it for a few minutes. That is why the startup amendment I offered in committee was so important, because it said nothing begins until the fund has its money and is operational. Therefore, those people had recourse. Once the start-up amendment was taken out, they had no recourse, and the CBO report says that is a $5 billion cost item right off the top.

Now, I offer the principles as a basis for compromise on this legislation. I offer this as one who sat through the hearings and the medical testimony and committee debates and participated in bipartisan amendments offered on the bill.

Thanks to Goldman Sachs, we ran numbers after numbers and Goldman Sachs has been good enough to run another set of numbers for me. We have changed some of the values to try to meet some of the concerns. I have those numbers with me.

I ask unanimous consent that the Fuller-Austin asbestos settlement letter to me dated July 2 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FULLER-AUSTIN ASBESTOS
SETTLEMENT TRUST,
*Greenville, TX, July 2, 2003.*

Hon. Senator DIANNE FEINSTEIN,
*U.S. Senate, Washington, DC.*

Re: S. 1125, The Fairness In Asbestos Injury Resolution Act Of 2003

DEAR SENATOR FEINSTEIN: The Fuller-Austin Asbestos Settlement Trust (the ''Fuller-Austin Trust'') was established in December 1998 by order of the United States District Court for the District of Delaware (the ''Court'') in connection with the confirmation of the Chapter 11 plan of reorganization of Fuller-Austin Insulation Company (''Fuller-Austin''). The purpose of the Fuller-Austin Trust is to review and pay allowed asbestos claims of individuals who were exposed to asbestos-containing materials sold, distributed, installed or removed by Fuller-Austin Insulation Company. Pursuant to the plan of reorganization, the Fuller-Austin Trust was funded with limited cash and other assets and received the right to the proceeds of insurance policies that covered Fuller-Austin's asbestos liabilities. The purpose of this letter is to express the concerns of the Trustees regarding the application of Senate bill 1125 to the Trust.

The Trustees, pursuant to Section 524(g) of the Bankruptcy Code, are mandated to provide fair and equitable treatment to all beneficiaries of the Fuller-Austin Trust over the expected claims period, which is anticipated to be the next 35 to 40 years. These are beneficiaries who must provide proof of their asbestos-related illness and exposure at one of approximately 360 sites where Fuller-Austin worked from 1947 through 1986. There is a finite amount of funding available to the Fuller-Austin Trust to fund its current and anticipated future liability to claimants. The claims procedures for the Trust, as approved by the Court, require the Trustees to make provision for equivalent treatment for present known claimants and the currently unknown claimants who will make claims in the future as their asbestos-related diseases are diagnosed. This requires a careful analysis and balancing by the Trustees to assure the long-term solvency of the Fuller-Austin Trust to meet the anticipated claims. In addition to the trustees, there is a Trust Advisor, whose mandate is to provide advice and consent to the Trustees with respect to issues regarding present, known claimants, and a legal Representative, whose mandate is to provide advice and consent to the Trustees with respect to issues regarding currently unknown claimants, including safeguarding their rights to equivalent treatment.

Since 1998, the Trustees have managed the Trust's small base of liquid assets to pay a small percentage of the allowed liquidated value of allowed claims and to cover the cost of insurance coverage litigation to pursue the major asset of the trust—the insurance available to Fuller-Austin to fund its asbestos liabilities. The litigation has been active since 1994. A second phase followed in September 2001, and a jury trial (the final phase) was just completed in May 2003. The litigation resulted in (i) settlements with nine insurers for approximately $200 million, some to be paid over the next few years, and (ii) a $188 million jury verdict against the remaining insurers in favor of Fuller-Austin on May 6, 2003. As a result of the settlements, the Trustees have increased the percentage of payments for each established disease value paid to holders of valid asbestos claims. The claims facility that receives, reviews, determines and pays these claims has been fully operational since August 2001.

Senate Bill 1125 presents the Trustees with several conflicts. First, the proposed law would take away the cash, property and insurance assets that were dedicated or transferred to the Fuller-Austin Trust pursuant to the Fuller-Austin plan of reorganization confirmed by the Court, undermining the orders of the Court. It would take away the assets in the form of settlements and verdicts the Trustees carefully have fought to muster for the beneficiaries of the Fuller-Austin Trust. The foreign insurers that are now the subject of a jury verdict, will argue that they now escape all liability under the proposed law, avoiding their contractual obligations as affirmed by the verdict of a dedicated jury, who spent more than eleven weeks hearing and deciding the Fuller-Austin case. Fuller-Austin's insurers used and abused the court system for nine years to delay paying their obligations under the policies they issued. The proposed law would reward that behavior. In return, the proposed law cannot provide any assurances when the national fund will be in a position to begin paying claims or what those payments will be, and it cannot provide any assurances that the national fund will be solvent and able to provide equivalent benefits to future claimants when their claims are asserted.

Second, passage of this legislation undoubtedly will set-off a firestorm of litigation challenging its constitutionality. The Trustees' present view is that their mandates under the Fuller-Austin Trust agreement and the Fuller-Austin plan of reorganization would require them to file litigation to challenge the taking of the Trust's assets and the violation of the rights of its claimants. Other existing trusts doubtless will reach the same conclusion. The resulting litigation will likely take years to resolve. In addition, it will take years to establish the claims handling facility mandated by the bill and for that entity to become operational. Finally, the limited annual funding provided by the bill will result in the need for years of build-up in the fund before current claim obligations can be paid. In the meantime, the beneficiaries of the Fuller-Austin Trust, many of whom gave up valuable rights in the tort system in exchange for the promised certainty of being paid by the Trust, would not be paid. Many would die before payments began from the federal fund and many more would not have funding for

much-needed medical care over the next few years. Please remember that most of our beneficiaries are senior citizens, and a delay of a few years could be critical.

The Trustees realize that many oppose the bill on a number of grounds, including constitutional challenges and concerns as basic as that the proposed funding levels will be insufficient to pay expected claims over the life of the trust. However, if the Committee decides to approve the bill, the Fuller-Austin Trust urges that existing asbestos trusts be exempted from the legislation or at least given the option not to participate. As a solution to (i) the issue that the proposal would take away the rights of beneficiaries of trusts established by court order under confirmed plans of reorganization and (ii) the funding crisis that would result for many present and future asbestos claimants, we suggest that existing trusts be allowed the option of continuing to function as intended and funded, leaving in place the obligations of the insurers to fund existing policies, settlements and judgments.

While we personally have concerns about the constitutional issues, the proposed funding levels for the trust, the medical criteria to be utilized, the award values and the potential windfall to certain insurers, our primary concern is to be able to continue to meet our mandate using funds and assets provided by Fuller-Austin's court-approved plan of reorganization through its fully operational trust and claims processing facility. The Fuller-Austin Trust is currently receiving, reviewing, determining and paying valid asbestos claims that meet the requirements of the procedures established by its plan. Senate Bill 1125 would completely derail this efficient and effective process to the extreme detriment of the beneficiaries of the Fuller-Austin Trust. In an effort to find a global solution to the asbestos litigation problem, pleas do not ignore the workable solutions already confirmed, in place and funded in the form of the existing trusts.

Sincerely yours,

ANNE M. FERRAZZI,
*Trustee.*
W.D. HILTON, Jr.,
*Managing Trustee.*
MARK A. PETERSON,
*Trustee.*

Mrs. FEINSTEIN. I also ask unanimous consent that the CBO report dated as of today to Senator DON NICKLES also be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, April 20, 2004.*

Hon. DON NICKLES,
*Chairman, Committee on the Budget,*
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: As you requested, CBO has prepared a cost estimate for S. 2290, the Fairness in Asbestos Injury Resolution Act of 2004, as introduced on April 7, 2004. The bill would establish the Asbestos Injury Claims Resolution Fund (Asbestos Fund) to provide compensation to individuals whose health has been impaired by exposure to asbestos. The fund would be financed by levying assessments on certain firms. Based on a review of the major provisions of the bill, CBO estimates that enacting S. 2290 would result in direct spending of $71 billion for claims payments over the 2005–2014 period and additional revenues of $57 billion over the same period. Including outlays for administrative costs and investment transactions of the Asbestos Fund, CBO estimates that operations of the fund would increase budget deficits by $13 billion over the 10-year period. The estimated net budgetary impact of the legislation is shown in Table 1.

S. 2290 contains both intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate direct cost of complying with the intergovernmental mandates in S. 2290 would be small and would fall well below the annual threshold ($60 million in 2004, adjusted annually for inflation) established in UMRA. CBO also estimates that the aggregate direct cost of complying with the private-sector mandates in S. 2290 would well exceed the annual threshold established in UMRA ($120 million in 2004 for the private sector, adjusted annually for inflation) during each of the first five years those mandates would be in effect.

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF S. 2290

| | By fiscal year, in billions of dollars— | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 |
| CHANGES IN DIRECT SPENDING | | | | | | | | | | |
| Claims and administrative expenditures of the Asbestos Fund: | | | | | | | | | | |
| Estimated budget authority | * | 18.5 | 12.8 | 12.9 | 5.3 | 5.3 | 5.3 | 5.2 | 5.0 | 4.9 |
| Estimated outlays | * | 7.5 | 10.7 | 14.6 | 9.8 | 7.6 | 5.3 | 5.3 | 5.2 | 5.0 |
| Investment transactions of the Asbestos Fund: | | | | | | | | | | |
| Estimated budget authority | 5.4 | 2.0 | −4.8 | −3.3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Estimated outlays | 5.4 | 2.0 | −4.8 | −3.3 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total direct spending: | | | | | | | | | | |
| Estimated budget authority | 5.4 | 20.6 | 8.0 | 9.6 | 5.3 | 5.3 | 5.3 | 5.2 | 5.0 | 4.9 |
| Estimated outlays | 5.4 | 9.5 | 5.9 | 11.3 | 9.8 | 7.6 | 5.3 | 5.3 | 5.2 | 5.0 |
| CHANGES IN REVENUES | | | | | | | | | | |
| Collected from bankruptcy trusts [1] | 1.0 | 0 | 0 | 4.6 | 0 | 0 | 0 | 0 | 0 | 0 |
| Collected from defendant firms | 3.3 | 2.8 | 2.8 | 2.8 | 2.7 | 2.7 | 2.7 | 2.7 | 2.7 | 2.6 |
| Collected from insurers | 2.7 | 7.5 | 2.2 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 | 1.6 |
| Total revenues | 7.0 | 10.3 | 5.0 | 9.0 | 4.4 | 4.3 | 4.3 | 4.3 | 4.3 | 4.3 |
| Estimated net increase or decrease (−) in the deficit from changes in revenues and direct spending | −1.5 | −0.8 | 1.0 | 2.3 | 5.5 | 3.2 | 1.0 | 1.0 | 0.9 | 0.8 |

[1] Cash and financial assets of the bankruptcy trusts have an estimated value of about $5 billion. The federal budget would record the cash value of the noncash assets as revenues when they are liquidated by the fund's administrator to pay claims.

Notes.—Numbers in the table may not add up to totals because of rounding. * = less than $50 million. CBO estimates that by 2014 the Asbestos Fund under S. 2290 would have a cumulative debt of around $15 billion. Borrowed funds would be used during this period to pay claims and would later be repaid from future revenue collections of the fund. We estimate that interest costs over that period would exceed $2.5 billion, and CBO's projections of the fund's balances reflect those costs. However, they are not shown in this table as part of the budgetary impact of S. 2290 because debt service costs incurred by the government are not included in cost estimates for individual pieces of legislation.

*Major provisions*

Under S. 2290, a fund administrator would manage the collection of federal assessments on certain companies that have made expenditures for asbestos injury litigation prior to enactment of the legislation. Claims by private individuals would be processed and evaluated by the fund and awarded compensation as specified in the bill. The administrator would be authorized to invest surplus funds and to borrow from the Treasury or the public—under certain conditions—to meet cash demands for compensation payments. Finally, the bill contains provisions for ending the fund's operations if revenues are determined to be insufficient to meet its obligations.

S. 2290 is similar in many ways to S. 1125. A more detailed discussion of the fund's operations and the basis for CBO's estimates of the cost of compensation under these bills is provided in our cost estimate for S. 1125, the Fairness in Asbestos Injury Resolution Act of 2003, which was transmitted to the Senate Judiciary Committee on October 2, 2003.

*Budgetary impact after 2014*

CBO estimates that S. 2290 would require defendant firms, insurance companies, and asbestos bankruptcy trusts to pay a maximum of about $118 billion to the Asbestos Fund over the 2005–2031 period. Such collections would be recorded on the budget as revenues.

We estimate that, under S. 2290, the fund would face eligible claims totaling about $140 billion over the next 50 years. That projection is based on CBO's estimate of the number of pending and future asbestos claims by type of disease that would be filed with the Asbestos Fund, as presented in our cost estimate for S. 1125. While the projected number of claims remains the same, differences between the two bills result in higher projected claims payments under S. 2290. The composition of those claims and a summary of the resulting costs is displayed in Table 2.

Although CBO estimates that the Asbestos Fund would pay more for claims over the 2005–2014 period than it would collect in revenues, we expect that the administrator of the fund could use the borrowing authority authorized by S. 2290 to continue operations for several years after 2014. Within certain limits, the fund's administrator would be authorized to borrow funds to continue to make payments to asbestos claimants, provided that forecasted revenues are sufficient to retire any debt incurred and pay resolved claims. based on our estimate of the bill's likely long-term cost and the revenues likely to be collected from defendant firms, insurance companies, and certain asbestos bankruptcy trust funds, we anticipate that the sunset provisions in section 405(f) would have to be implemented by the Asbestos Fund's administrator before all future claimants are paid. Those provisions would allow the administrator to continue to collect revenues but to stop accepting claims for resolution. In that event, and under certain other conditions, such claimants could pursue asbestos claims in U.S. district courts.

TABLE 2.—SUMMARY OF ESTIMATED ASBESTOS CLAIMS AND AWARDS UNDER S. 2290

[Dollars in billions]

| | Initial 10-year period | | Life of fund | |
|---|---|---|---|---|
| | Number of claims | Cost | Number of claims | Cost of claims |
| Claims for malignant conditions | 59,000 | $36 | 127,000 | $82 |
| Claims for nonmalignant conditions | 627,000 | 17 | 1,230,000 | 36 |
| Pending claims | 300,000 | 22 | 300,000 | 22 |
| Total | 986,000 | 75 | 1,657,000 | 140 |

*Major differences in the estimated costs of claims under S. 1125 and S. 2290*

You also requested that CBO explain the major differences between our cost estimates for S. 1125 and S. 2290. On March 24, 2004, in a letter to Senator Hatch, CBO updated its October 2, 2003, cost estimate for S. 1125, principally to reflect new projections about the rate of future inflation and an assumed later enactment date for the bill. That letter explains that we now estimate enactment of S. 1125 at the end of fiscal year 2004 would result in claims payments totaling $123 billion over the lifetime of the Asbestos Fund (about 50 years).

Three factors account for the difference between the estimated cost of claims under S. 1125 and that under S. 2290 (see Table 3):

The award values specified in S. 2290 are higher for certain types of diseases. That difference would add about $11 billion to the cost of claims, CBO estimates.

Under S. 2290, most asbestos claims could not be settled privately once the bill is enacted. In contrast, under S. 1125, asbestos claims could continue to be settled by private parties between the date of enactment and the date when the Asbestos Fund is fully implemented; defendant firms could credit any payments made during that period against required future payments to the fund. Consequently, CBO estimates that the fund created by S. 2290 would face about $5 billion in claims that, under S. 1125, we anticipate would be settled privately.

S. 2290 specifies that administrative expenses of the program would be paid from the fund. Under S. 1125, in contrast, administrative costs would be appropriated from the general funds of the Treasury. That difference would increase costs to the fund by about $1 billion over its lifetime.

In the limited time available to prepare this estimate, CBO has not evaluated the differences between the two bills in administrative procedures. Under S. 2290, the Asbestos Fund would be operated by the Department of Labor rather than the U.S. Court of Federal Claims. This and other differences between the two bills could affect the cost of administration, the timing and volume of claims reviewed, and the rate of approval for claims payments.

TABLE 3.—DIFFERENCES IN ESTIMATED CLAIMS AGAINST THE ASBESTOS FUND UNDER S. 1125 AND S. 2290

| | In billions of dollars |
|---|---|
| Estimated cost of asbestos claims under S. 1125: | 123 |
| Added costs due to higher award values under S. 2290 | 11 |
| Additional claims not privately settled after enactment under S. 2290 | 5 |
| Administrative costs under S. 2290[1] | 1 |
| Total estimated claims against the fund under S. 2290 | 140 |

[1] Under S. 1125 administrative costs would be appropriated from the general fund of the Treasury.

*Major differences in estimated revenue collections under S. 1125 and S. 2290*

CBO estimates that the Asbestos Fund under S. 2290 would be limited to revenue collections of about $118 billion over its lifetime, including contingent collections. CBO has not estimated the maximum amount of collections that could be obtained under S. 1125, but they could be greater than $118 billion under certain conditions. In our cost estimate for S. 1125, we concluded that revenue collections and interest earnings were likely to be sufficient to pay the estimated cost of claims under that bill. That is not the case for S. 2290.

Over the first 10 years of operations, we estimate that revenue collections under S. 1125 would exceed those under S. 2290 by $7 billion. Thus, under S. 2290 we estimate that there would be little interest earnings on surplus funds and that the Asbestos Fund would need to borrow against future revenues to continue to pay claims during the first 10 years of operations.

*Estimates of the cost of resolving asbestos claims are uncertain*

Any budgetary projection over a 50-year period must be used cautiously, and as we discussed in our analysis of S. 1125, estimates of the long-term costs of asbestos claims likely to be presented to a new federal fund for resolution are highly uncertain. Available data on illnesses caused by asbestos are of limited value. There is no existing compensation system or fund for asbestos victims that is identical to the system that would be established under S. 1125 or S. 2290 in terms of application procedures and requirements, medical criteria for award determination, and the amount of award values. The costs would depend heavily on how the criteria would be interpreted and implemented. In addition, the scope of the proposed fund under this legislation would be larger than existing (or previous) private or federal compensation systems. In short, it is difficult to predict how the legislation might operate over 50 years until the administrative structure is established and its operations can be studied.

One area in which the potential costs are particularly uncertain is the number of applicants who will present evidence sufficient to obtain a compensation award for nonmalignant injuries. CBO estimates that about 15 percent of individuals with nonmalignant medical conditions due to asbestos exposure would qualify for awards under the medical criteria and administrative procedures specified in the legislation. The remaining 85 percent of such individuals would receive payments from the fund to monitor their future medical condition. If that projection were too high or too low by only 5 percentage points, the lifetime cost to the Asbestos Fund could change by $10 billion. Small changes in other assumptions—including such routine variables as the future inflation rate—could also have a significant impact on long-term costs.

*Intergovernmental and private-sector mandates*

S. 2290 would impose an intergovernmental mandate that would preempt state laws relating to asbestos claims and prevent state courts from ruling on those cases. In addition, the bill contains private-sector mandates that would:

Prohibit individuals from bringing or maintaining a civil action alleging injury due to asbestos exposure;

Require defendant companies and certain insurance companies to pay annual assessments to the Asbestos Fund;

Require asbestos settlement trusts to transfer their assets to the Asbestos Fund;

Prohibit persons from manufacturing, processing, or distributing in commerce certain products containing asbestos; and

Prohibit certain health insurers from denying or terminating coverage or altering any terms of coverage of a claimant or beneficiary on account of participating in the bill's medical monitoring program or as a result of information discovered through such medical monitoring.

S. 2290 contains one provision that would be both an intergovernmental and private-sector mandate as defined in UMRA. That provision would provide the fund's administrator with the power to subpoena testimony and evidence, which is an enforceable duty.

CBO estimates that the aggregate direct cost of complying with the intergovernmental mandates in S. 2290 would be small and would fall well below the annual threshold ($60 million in 2004, adjusted annually for inflation) established in UMRA. CBO also estimates that the aggregate direct cost of complying with the private sector mandates in S. 2290 would well exceed the annual threshold established in UMRA ($120 million in 2004 for the private sector, adjusted annually for inflation) during each of the first five years those mandates would be in effect.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lanette J. Walker (for federal costs, who can be reached at 226–2860, Melissa Merrell (for the impact on state, local, and tribal governments), who can be reached at 225–3220, and Paige Piper/Bach (for the impact on the private sector), who can be reached at 226–2960.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
*Director.*

Mrs. FEINSTEIN. Where we have made some changes—and I would suggest them—is in the second class, raising the Hatch-Frist values from $20,000 to $25,000; in class III, raising the values for asbestosis/pleural disease B from $85,000 to $100,000; in class VI, other cancers, going from $150,000 to $200,000; in class VII, giving nonsmokers with 15 years weighted exposure a range of $225,000 to $650,000—that is $50,000 more than in the Hatch-Frist proposal; in class VIII, lung cancer with pleural disease, giving nonsmokers a range of $600,000 to $1.1 million—a $100,000 increase; in class IX, giving nonsmokers a range of $800,000 to $1.1 million a $100,000 increase; and for mesothelioma, the last category, a $1.1 million average award on a sliding scale.

These numbers have been run by Goldman Sachs. They total $123.6 billion, as opposed to the $114.4 estimated for the Hatch-Frist proposal.

Because I have not been party directly to any of the discussion, regretfully, the only way I can get my views through, it appears, is through the floor of the Senate. I believe this is much more fair to nonsmokers and I believe the methodology of giving the trust administrator the ability that, if nonsmoker cases rise above a certain percent in the next year, at the end of the previous year the administrator be given the power to put all of those cases into the tort system which will not only act as a deterrent, but will also provide the ability to fund this.

One other point I want to make before I yield the floor has to do with the CBO letter. The CBO letter, in addition to the additional $5 billion that removing my startup amendment would cost the fund, also points out the bill on the floor is different from the bill we passed out of committee because in the

bill we passed out of committee, administrative costs would be appropriated from the general funds of the Treasury. That difference increases costs to the fund $1 billion over its lifetime.

So those are the reasons why CBO determined that the Hatch-Frist bill will cost $17 billion more than the Committee-passed bill.

By way of conclusion, I would very much hope this bill will go back to the Judiciary Committee. I very much hope all members of the Judiciary Committee would have input into this bill. Or a bill should be negotiated between the two leaders, so it is bipartisan. There is no way I see a bill being written in private passing this body. Too many of us have put in too much time to try to get a fair solution to let that happen.

I yield the floor.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Utah.

Mr. DODD. Will the Senator from Utah yield for 1 minute?

Mr. HATCH. I am delighted to yield.

Mr. DODD. I commend the Senator from California for her statement and comments. She has been deeply involved in this effort, as have many of us over the last number of months, if not years. She has made a very comprehensive set of suggestions, to which I think our colleagues want to pay serious attention. I know my colleague from Utah will. He is a fairminded individual who cares deeply about this legislation as well. But I commend her for her comments.

Mrs. FEINSTEIN. Thank you very much.

Mr. DODD. At an appropriate time, I say to the distinguished chairman of the committee, I will ask unanimous consent that following the remarks of the Senator I may have some time, too. I don't know what the order is, but is such a request appropriate, Mr. President?

The PRESIDING OFFICER. The Senator can seek consent.

Mr. DODD. I ask unanimous consent at the conclusion of the remarks by the chairman of the Judiciary Committee, the Senator from Utah, that the Senator from Connecticut be recognized for 30 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Utah.

Mr. HATCH. Mr. President, I listened to the distinguished Democratic leader on the Judiciary Committee, Senator LEAHY. He made a number of statements I feel need to be corrected. I know he sincerely made them. I am not trying to disparage him in any way, but he has made the same mistake I think the minority leader made this morning, that only $25,000 is given to these people who are heavy smokers, who have no sign of asbestosis, no markers, no signs on their X-rays, where we have $25,000 to $75,000 for these people, even though in all likelihood their maladies have come from their smoking.

If smoking and asbestos work in concert, together, why don't any of the bankruptcy trusts pay any money for lung cancer claims that do not present any markers or impairment at all? They do not.

Here we are giving $25,000 to $75,000 for complaints that get absolutely zero in court. Why are these same claims almost always met with a defense verdict in the tort system? Even the tort system, as out of whack as it is, will not give these people money. Yet we do. You would think it was a crime that it is not more. That is typical of the arguments on the other side. You will never have enough money here to satisfy some on the other side no matter what you do. What we are trying to do is resolve this problem so the country can go forward, so these businesses don't all go belly up, so the jobs are not lost, pensions are not lost, and so people can get money without paying 60 percent of the recoveries to attorneys and for transaction fees.

By the time you add the defense attorneys' costs, the plaintiffs' attorneys' contingent fees, and the transaction costs, it is 60 percent of every dime that is raised in these horrendous court decisions that are paying people who are not sick to the exclusion of people who are. This bill solves that problem.

Isn't it true this bill pays up to $1 million to lung cancer claims where there is more certainty it was caused by asbestos exposure? The fact is, it is true. That is $1 million some of these—a lot of these people will never get under the current tort system. But a lot of people who have never suffered 1 day of impairment in these jurisdictions I have been talking about will wind up with millions of undeserved dollars because this system is out of whack.

I am getting a little sick and tired of hearing my colleagues blast Halliburton. There is only one reason they do that. That is because, even though he has nothing to do with it, even though he has long been gone from it, even though everything he has had to do with it has been finalized and closed, the Vice President used to work for Halliburton. It gets old. I mean it is cheap shots, there is no question about it. Frankly, let me say I have to respond to the dubious argument that Halliburton is gaining a windfall by this fund. Anybody who believes that should call them and ask how they feel about this fund. The truth is they may actually be better off by not having this legislation.

Even some personal injury lawyers involved in the settlement with Halliburton believe that is the case, that they are better off not being part of raising the $124 billion.

The truth has not stopped some of my colleagues from making exaggerated statements about this bill. I suppose it is no surprise that when they get the chance to take a shot, truthful or not, at their favorite whipping boy, they are not going to pass it up. That is what they do—as if all big businesses are bad and all big businesses screw their employees and all big businesses are out to hurt the economy.

Let me state for the record how this bill compares to the Halliburton settlement. The conditional settlement reached with the plaintiffs' lawyers is just over $4 billion. There is a conditional settlement that Halliburton entered into that is a little over $4 billion. Only $2.7 billion of that amount is cash. Of this $2.7 billion, about $2.3 billion may be recovered by Halliburton from insurers. The remaining amount of the settlement, about $1.3 billion, involves issuing shares of stock. If the legislation is adopted, it seems likely the stock value will increase so that any dilution of stock values in the short run will be offset by medium- and long-term capital gains. So the actual cost to Halliburton is not the $4 billion they throw in, which some of my colleagues claim.

We understand the firm believes recoveries from insurers in issuing new stock—two elements that those who argue this is a bailout always neglect to mention—will act together to create an actual out-of-pocket liability to the firm of less than $1 billion.

How does their fund liability compare? As a tier 1 company in this bill, under the fund they would pay $86.5 million per year. The total nominal value of their liability under the fund would be just short of $2 billion. This is a bailout? It is a lot more than they would have to pay under their settlement. I hesitate to even say this in the Senate because if I were with Halliburton, I would take care of the settlement, the heck with this. But it would take some real effective money away from this trust fund. Halliburton is not the only one.

Again, it appears some of my colleagues are not interested in hearing details such as these. They would rather confuse the facts and do anything they can to make sure the personal injury lawyers who support them do not lose out on their more than $60 billion of projected fees—just from asbestos litigation—if this bill is not passed.

No wonder they can afford to run these stupid ads all over America, acting as if they are fighting for little individual people. Give me a break. The fact is, everybody in this body knows there is a tremendous rip-off of a lot of people who have suffered from mesothelioma and other related asbestos diseases who are not going to get anything, or will get relatively nothing, if this bill does not pass.

Now, we are faced today with a historic opportunity to right a serious wrong being committed against victims of asbestos exposure, as well as the thousands of companies and individuals who stand to lose out in terms of potential bankruptcies, loss of jobs, loss of pensions, under today's downright irrational system of compensation under our current tort system.

For more than 20 years, our compensation of legitimate asbestos victims has been unacceptably diminished and delayed. It has become quite evident to the Judiciary Committee that tens of thousands of true asbestos victims, including their families, are faced with agonizing pain and suffering, with uncertain prospects of any meaningful recovery in the existing tort system.

These inequitable results are particularly troubling when viewed against the reality that large dose exposures to asbestos, associated with asbestos-related diseases, ended in the 1970s. That is when they ended. Asbestosis is considered by many as a ''disappearing disease.'' These victims are left with little to nothing because, among other things, precious resources are being diverted toward the defense and payment of a massive influx of asbestos claims brought largely by a group of overzealous personal injury lawyers on behalf of these many unimpaired plaintiffs, people who have never suffered from anything to do with asbestos.

Cardozo law school professor, Lester Brickman, found that more than 80 percent of claims made in recent years and 90 percent at present do not involve a medically recognizable injury. You wonder what is going on. That would not happen but for courts that literally are not abiding by the law, where judges are bought by trial lawyers, and where they are totally plaintiffs oriented and the jurors come from areas where it is not their money, so they will put up any amount of money for people who are not even injured.

In other words, a great majority of asbestos lawsuits today are brought by those who are not even sick. These claimants show lung conditions similar to the general population, including that of individuals with absolutely no asbestos exposure at all.

To put the asbestos litigation problem in perspective, I will share the story of Mary Lou Keener, the daughter of an asbestos victim, who has spoken out in support of this legislation. Mary Lou knows all too well how the current asbestos crises has failed some of our Nation's true patriots, our veterans.

Mary Lou Keener's father served in the engine rooms of the USS *Mayrant, Lindsey,* and *Columbus* in World War II in the Pacific. Both the *Mayrant* and *Lindsey* suffered serious damage from enemy attacks. Mary Lou's father had the dangerous assignment of helping to bring these crippled ships back to port, spending months fighting to keep them afloat, and beginning massive repair work while they were still at sea. He then spent months at the shipyard helping to finish the repairs.

What Mary Lou's father did not know was that the countless hours spent in the engine rooms and boilers would cost him his life. The same is true of thousands of veterans like him. These ships, like almost every vessel in our fleet at the time, contained massive amounts of asbestos. Every moment he spent working to return these ships to battle, breathing the contaminated dust and debris, worsened his condition and guaranteed that he would never ever be able to recover.

Not surprisingly, he developed mesothelioma, ultimately succumbing to this horrible, painful, and deadly disease on—guess what—Veterans Day, 2001.

Mary Lou's father was more fortunate in one way than many veterans: He had a daughter, a truly exceptional woman who is a nurse, a lawyer, and a Navy Vietnam veteran. She is also a member of the Veterans Rights Commission.

When she learned of her dad's condition, she rushed to help him and her mother navigate the complicated maze of regulatory and legal systems that he faced. Unwilling to take no for an answer, Mary Lou pushed to have him examined at the National Cancer Institute, part of the National Institutes of Health. It was there that Mary Lou's father received the definitive diagnosis that he suffered from mesothelioma. Mary Lou made sure he received the best treatment available from experts throughout the country.

After his death, Mary Lou helped her mother fight through the regulatory requirement to obtain dependent indemnity compensation from the Federal Department of Veterans Affairs for a service-connected death. She helped her mother find an asbestos plaintiffs law firm to file a tort and wrongful death claim. Now, despite Mary Lou's efforts, her father's lawsuit, even with a resourceful and tenacious advocate like his daughter, has been languishing in the courts for over 18 months.

As most veterans learn, there are few viable defendants left who are responsible for supplying asbestos to the Navy. Mary Lou's mother received three checks from defendant companies, but they are all bankrupt and the amounts are very tiny. She can only cling to the hope that there may be other viable defendants, but the reality is that far too many veterans will go uncompensated under the current tort system.

Perhaps this is why Mary Lou Keener spoke out in support of S. 2290, stating:

> The courts are clogged with asbestos cases, and even if [my mother] finally has her day in court, the law firm will collect almost half of any jury award. That's why passage of [the FAIR Act] is so important. The Trust Fund solution to this problem envisioned by [the FAIR Act] will bring much needed compensation to veterans suffering from asbestos related diseases and end the vagaries and lengthy delays of the current/tort wrongful death systems.

Last year, Mary's mother received a call from her attorney. Unfortunately, it was not about her husband's case. Instead, she was told she should consider contacting her Senators immediately and ask them to vote against the asbestos legislation. Needless to say, she declined that request. She understands that for veterans like her husband, while the status quo might benefit a handful of personal injury lawyers, it completely fails the one group that should be given the ultimate priority; that is, the asbestos victims.

Now, let me refer to this chart: What is wrong with asbestos litigation? This is for the Navy veteran I have been talking about with mesothelioma. Under the tort system, he gets nothing. Under the FAIR Act, each of them gets $1 million. I have to say, no amount of money will compensate people for what they have gone through, but that is so much more than any of them are ever going to get without this bill.

Now, as I say, unfortunately, the asbestos litigation problem reaches beyond our veterans and into the lives of everyday, hard-working Americans who are victimized by asbestos and the very system designed to vindicate their rights. One matter I find particularly troubling is the case of Huber v. Taylor. That is a class action lawsuit currently pending in the Western District of Pennsylvania. The suit was filed by 2,644 plaintiffs in asbestos personal injury suits against the personal injury lawyers who represented them. The suit charges that the lawyers treated their clients as mere inventory, distributing only a few thousand dollars to each plaintiff for their injuries, while retaining tens of millions of dollars in attorneys' fees.

Now, I bring this case to the Chamber's attention because it underscores the severity of the asbestos litigation crisis and why it is imperative we, as a legislative body, must now act to address this problem.

Ronald Huber spent 35 years as a steelworker, inhaling asbestos fibers while working on the job. In 1995, he joined a class action against nearly 200 companies that made or distributed asbestos or asbestos-containing products. Although that class action settled for approximately $140 million, Mr. Huber has not seen a single penny from this award. How much did Mr. Huber's lawyers walk away with? They received $56 million.

Look at this chart: What is wrong with asbestos litigation? Huber v. Taylor. The trial lawyers got $56 million; asbestos victims basically nothing. Think about it. That is right, the lawyers received $56 million and the asbestos victims received nothing.

In response to this severe injustice, Mr. Huber and over 2,000 of his fellow class members filed a lawsuit on February 7, 2002, in the U.S. District Court for the Western District of Pennsylvania against the personal injury lawyers who represented them in the first action. As of today, the court is still hearing arguments on various motions.

The complaint charges the defendants with breach of fiduciary duty; failure to disclose the identity and nature of the actions they had joined; false representation to deprive the plaintiffs of funds belonging to the plaintiffs;

failure to exercise the degree of competence and diligence exercised by lawyers in similar circumstances; and misrepresentation of material facts. The plaintiffs are seeking compensatory and punitive damages.

All of the plaintiffs to this action are described as ''hard-working union members in blue-collar trades.'' All of them were exposed to asbestos during their working years. All, to a large extent, have little knowledge or experience in the legal system. All state they were ''recruited'' by plaintiffs' law firms for inclusion in ''mass actions,'' and all say their lawyers told them nothing about the lawsuits in which they were involved.

Their complaint arises from what they call the ''corruption of the personal injury bar.'' The lawsuit states that, as early as the early 1980s, the prosecution of asbestos personal injury claims had evolved into an industry and the lawyers who were prominent in that industry had accumulated a vast amount of wealth. To quote the complaint:

> The promise of such wealth drew additional plaintiffs' lawyers into the field, and this resulted in more and more aggressive efforts to recruit asbestos personal injury plaintiffs.

I think it is a sad state of affairs when asbestos victims have to sue their own lawyers to receive compensation for their injuries. We cannot allow the current, broken system to continue in this manner. It deprives victims of a meaningful remedy and diminishes public confidence in our civil justice system.

I think we have to do something now to ensure there are no more Robert Hubers who are left with no recourse other than to sue their own lawyers.

We must also act now to ensure that the tireless efforts of everyday Americans such as Mary Lou Kenner are not taken in vain. These are two of just thousands and thousands of people.

It is because of these problems that I urge my colleagues to support S. 2290. Under this bill, victims will receive prompt and certain compensation through a privately funded trust administered by the Department of Labor. Moving existing claims to the fund will significantly cut out the exorbitant transaction costs inherent in our tort system—especially given the no-fault nature of the new system being proposed.

In today's tort system, victims bear the heavy burden of proving that a specific product caused their illness. They must show culpability through causation and connect the dots that lead to the ultimate defendant. Unfortunately, few victims today are capable of producing sufficient evidence to show their illnesses were caused by a particular company's products. In fact, because of the long latency period associated with these asbestos-related diseases, the quality of evidence will inevitably degrade over time where memories fade and documents get lost. Thus, for the scores of victims who do not have an ironclad case against any one defendant, a no-fault system is an extremely important component when crafting a solution to the asbestos problem.

Now, to illustrate my point, I would like to share the story of siblings Paul and Suzanne Verret. After being diagnosed with plural mesothelioma, both brought suit against four defendants, each a potentially responsible party under tort law. But after hearing evidence presented by the defense, a Texas jury ruled, just last month, that the Verrets' conditions were not caused by any of the four defendants who were likely to have been the result of exposure to asbestos from a Johns Manville factory in the neighborhood.

Asbestos tailings from the plant have been used for driveways and parking lots in the neighborhood where the Verrets grew up. Johns Manville, however, is now bankrupt and its asbestos trust is paying pennies on the dollar on all claims. As a result of the jury's verdict, the Verrets are unlikely to recover any compensation for their injuries, but under S. 2290 they stand to recover $1 million each in compensation.

Now, look at these Texas mesothelioma victims, Paul and Suzanne Verret. Under the current tort system, as shown on the chart on the left, victims hire lawyers and sue defendants. After years of trial processes and delays, victims are unable to prove causation. They use trial lawyers and collect zero. But under this bill, S. 2290, with the trust fund—if enacted—each of these people will collect $1 million in compensation.

By the way, unless they are lucky enough to get a lawyer who is going to forum shop for them into a jurisdiction where the judges are basically in the pockets of the plaintiffs' lawyers, the personal injury lawyers, they might get something that way, but there are going to be very few who get that, and most of those people are not going to be ill. They are not going to have suffered and not going to be able to prove their case in other courts of law in the country. It is pathetic.

Naturally, there are some great lawyers who do what is right here. I do not mean to find fault with them. I find fault with these phonies who use forum shopping jurisdictions and really what I consider to be corrupt judges and, in many cases, corrupt juries, to obtain humongous verdicts for people who are not even sick, taking the moneys away from those who are sick, which this bill would solve.

In the coming days, we will be engaged in a historic debate regarding the asbestos litigation crisis facing this country. The outcome of this debate will have very real consequences on the victims of asbestos and their families. These victims are counting on us, their elected Senators, to do the right thing and address the problems in our tort system that is badly broken by asbestos litigation.

I have to say, when you folks out there see these phony ads about how this bill is bad and the tort system is good, those ads are paid for by these attorneys who have already taken $20 billion in fees away from victims, and will take another $40 billion more, for a total of $60 billion, out of their pockets. It is easy to see why they do not want this bill. It is a gravy train they do not want to stop.

They certainly don't want it to be stopped by this bill, which is where the gravy train would end for lawyers and recoveries that are worthy will begin for victims.

Let me say, although the stakes in this debate are high, the risk of not acting or allowing a broken system to remain broken is even more consequential. We at the very least owe it to people such as Mary Lou Kenner and Ronald Huber to make this bill the pending business of the Senate. We really need to do that.

Let me tell you one more story about the impact of the current asbestos system on American business. The reach of the personal injury lawyers—I am talking about the dishonest ones—and their web of abusive litigation practices appears to have no limit. At last count these personal injury lawyers have cast their asbestos net to include some 8,400 defendant companies representing virtually every industrial sector of the U.S. economy.

Approximately 70 companies, 35 since the year 2000 alone, have now been driven into bankruptcy as a result of asbestos litigation. Disturbingly, most of these companies that now find themselves named as defendants in asbestos cases had little or nothing to do with the manufacture, sale, or distribution of asbestos or asbestos-containing products. Under the ''deep pocket'' theory of law now commonly subscribed to by many personal injury lawyers, liability is not based on culpability; instead, it is based on the nearest available pot of money.

What is more, an estimated 90 percent of the claims now being filed are on behalf of persons with no discernable illness, many of whom were recruited by for-profit, mass- screening operations being sponsored by enterprising trial lawyers.

I would like to talk about a company that has facilities in my home State of Utah. Philadelphia-based Crown Cork & Seal is representative of all too many of the businesses that have found themselves targeted by the personal injury lawyers over asbestos.

In 1963, Crown Cork & Seal, a consumer products packager in the can and bottle cap business, purchased, for $7 million, the stock of Mundet Cork Company, a New Jersey-based firm that made cork-lined bottle caps and insulation that contained asbestos. Because Crown was only interested in the bottle-cap business, Mundet sold its insulation division approximately 90 days after the purchase of its stock by Crown. Thereafter, Mundet, consisting

only of its bottle cap business, was merged into Crown.

Crown never operated Mundet's insulation business, nor had it ever intended to operate its insulation business. Crown was only interested in acquiring Mundet's bottle-cap assets; no Mundet insulation managers ever worked for Crown, and no Mundet stockholders ever had any ownership interest in Crown.

The trial lawyers have made Crown Cork & Seal pay dearly for the 90 days it owned the insulation division of Mundet. To date, Crown has had to pay out over $400 million in asbestos claims. To give this some context, that is over 57 times what Crown paid for Mundet in 1963. In fiscal year 2003 alone, Crown paid over $200 million in asbestos-related costs, of which only $25 million—or 12.5 percent—went to real victims of asbestos-related diseases, and that is what is going on.

It is a rip-off. That is what is going on. That is what our colleagues are arguing for. It is a rip-off. Why? Some say it is because these personal injury lawyers are going to put up $50 million or $100 million for their nominee for President. I hope that is not true, but it is all too evident that that probably is.

Here are these victims who should not have been able to sue Crown Cork & Seal to begin with. Crown Cork paid over $200 million in asbestos-related costs last year alone, and the victims got $25 million out of $200-plus million or 12.5 percent. All the rest went to lawyers, claimants who were not ill, and other costs.

Look at this Crown Cork & Seal chart. What is wrong with asbestos litigation? Crown Cork & Seal: $25 million out of $200 million total. Of the more than $200 million paid by Crown Cork & Seal in 2003, actually only $25 million went to individuals impaired with asbestos-related illnesses. Where did the $175 million go? It is a rip-off. That is what is happening.

This bill will stop that. It is an expensive bill for the companies involved. They are going to have to pay for 27 years and pay through the nose. Many of them are in the same position as Crown Cork. They should never have had to pay a dime to begin with. The story of Crown Cork & Seal is just one of thousands of examples why we cannot put off fixing this problem any longer. Our current system is one that does not serve businesses and their employees whose livelihoods depend on them. Our current system surely has not served the victims of asbestos.

I urge my colleagues to join me in supporting the FAIR Act, to vote for cloture so that we can stop this obstructionist filibuster being led by some of my Democratic colleagues. Think about it. They are filibustering a motion to proceed to this bill so we can debate the bill itself, filibustering it so we cannot add amendments to the bill. If they have good amendments, bring them up. We will listen to them and hopefully pass them, if they are good. If they are not, they might get them passed anyway. The point is, let's at least allow the Senate to work its will. Let's not stop even a motion to proceed this bill.

I would like to respond to claims that were made earlier today that the Hatch-Frist-Miller bill is not fair to pending plaintiffs. This bill preempts and supersedes those claims pending in the tort system today, including verdicts that are still subject to appeal or judicial review. Preemption of such claims assures an end to a broken tort system that everyone agrees is slow, unwieldy, and fundamentally unfair to asbestos victims.

The opponents' solution to their concern that the FAIR Act is unfair for pending plaintiffs is to keep the tort system open for pending claims. These critics are asking Congress to perpetuate the very problem this bill is seeking to rectify; that is, a broken system that is failing victims by misallocating resources away from the truly sick, where such victims receive too little because so much is going to the unimpaired and to attorneys who take most of the money.

We all know the statistics. The vast majority of the claims being filed today, as high as 90 percent, are by individuals with little or no current functional impairment. Let me tell you how this translates into real money. Using the values cited by the minority views in the report of the Judiciary Committee on S. 1125 for unimpaired claimants, it is $40,000 to $125,000. Allowing pending claims to continue could direct anywhere from $10.8 billion to $33.8 billion or more to unimpaired claimants.

How many of these claims are based on mass screenings? It has been estimated that the abuse of mass screenings has resulted in $28.5 billion having been paid for meritless claims. That is almost $30 billion that has gone to people who don't really have claims. This completely undermines the consensus public policy decision to redirect these funds to those who are truly sick from asbestos exposure and the whole purpose of this asbestos legislation.

The bipartisan medical criteria argument forged in the Judiciary Committee recognizes unimpaired claimants should be monitored but should not be paid for illnesses they have not and may never develop. But we will pay for monitoring.

Opponents of the bill who seek to perpetuate the tort system would also preserve the exorbitant attorney's fees associated with such claims. As much as 40 to 50 percent of awards go to the personal injury plaintiffs' lawyers fees and costs. Indeed, while we debate the bill, personal injury attorneys likely will file a large number of claims in the tort system, most of which undoubtedly will be for unimpaired claimants which would be allowed to continue if these opponents have their way. The rest, probably another 10 percent, goes to the defendant attorneys who have to defend these companies, many of which should not have any liability at all.

There is no justification for allowing personal injury lawyers to continue to siphon significant resources out of the system when these resources could be dedicated to compensating those who are truly sick from asbestos exposure. The intent of the FAIR Act is to fix a system that everyone agrees is badly broken and in desperate need of repair.

John Hyatt, the counsel for the AFL–CIO who testified before the Judiciary Committee in 2002, described the tort system as having ''high transaction costs, inequitable allocation of compensation among victims, delays in payment to victims, and a general climate of uncertainty that is damaging business far more than it is compensating victims.'' That is the counsel for the AFL–CIO. I have often heard Democratic colleagues make similar statements perpetuating the tort system, claims that undermine the bill, saying that would be better or more ''fair'' treatment than they would get under the FAIR Act. ''Fair'' has to be in quotes in that manner.

In fact, the Hatch-Frist-Miller bill provides relief to current pending claims. Any claimant who has filed a lawsuit in any State would be eligible for prompt compensation from the fund provided they meet the eligibility criteria set forth in the bill. These criteria are quite wrong. We should not treat plaintiffs in court as second class citizens. Cases filed in the tort system take years to process, and there is no guarantee that even with the trial date, a case will proceed. Cases in New York City given trial dates in 2002 have yet to go to trial. Even then, in most jurisdictions, cases that actually have been tried are often appealed, and years pass before the case is formally resolved. In the interim, plaintiffs are without relief, and money is being spent on lawyers, with no relief. There is no reason to leave this type of system in place. Moreover, the mere fact that a case is filed is no guarantee it will proceed. Claimants' cases proceed sometimes based on how many slots the trial has for your lawyer, where the cases were filed, what defendants are left, and other vagaries completely out of a claimant's control. That day will stop with the passage of this bill, which now provides expedited payments to anyone who can demonstrate a hardship, who has been diagnosed—anybody who can demonstrate a hardship or who has been diagnosed with mesothelioma or with another asbestos-related disease who has less than a year to live or can otherwise establish a circumstance requiring accelerated payment. The money is there now, when it is needed, and it can be paid out quickly to help these families. This bill also fixes the judicial system, unclogs the courts, allowing these judges to deal with other matters, not

asbestos cases in the wings waiting for court time that is precious and, at this point, unavailable.

There is no need or benefit to leave these cases which have been clogging the courts pending in the courts. These cases are the very reason we are seeking to fix a broken system. There is no evidence the courts can or will handle them properly and not prejudice the litigants waiting their turn. Creating a two-track process is likewise unfair to victims and defendants. Despite all the rhetoric from opponents to the bill, when compared to what the current tort system will provide, legitimately ill claimants will fare much better under this FAIR Act.

We will have victims who get immediate relief through the fund, while those with litigation pending must wait and hope for a court date and then hope the company responsible is still solvent and can afford the cost. What will we say to them when we have left a system that we agree is broken, and they are sitting in court for years? Great care has been made to ensure that the compensation program would be processing and paying claims soon after the date of enactment. There are no assurances that plaintiffs would have claims resolved in the tort system within this same amount of time. Indeed, experienced staffs say they are likely to continue to sit in court even longer.

Furthermore, awards in the tort system are disparate and depend largely on where the claim was filed, what judge is presiding, rather than the severity of the illness. In other words, it is a phony system.

Professor Laurence Tribe described the system as resembling a lottery, noting: Some victims receive astronomical awards, while others receive little or nothing. Quite a few severely injured victims die before their cases could can be heard. Plaintiffs point to the larger awards in some cases and cannot be denied, so some have been able to win in this lottery system, or win the lottery. These awards, however, are the exception and reserved for the few claimants who can survive through a long and hard trial, as well as appeals, often taking many years to see any moneys at all. Then they will find that about 60 percent of the moneys are gone anyway.

The plaintiffs bar doesn't point to the majority of claims receiving significantly less money for more severe claims or even up to 40 percent taken out for attorneys' fees. As a stark example, a 2001 asbestos verdict awarded Mississippi plaintiffs $25 million each, where none of the plaintiffs claim prior medical expenses or absences from work due to any related illness with the case of a cancer victim who underwent a lung removal operation. This cancer victim grudgingly agreed to join a class action suit against an asbestos company. He never lived to see the outcome of the case, and after 7 months his estate was awarded a mere $3,000. The others didn't even have injuries.

Substantial judicial proceeds dating back to the early 20th century supports the constitutionality of Congress' authority to preempt tort claims when it believes it is in the public interest. It is clearly in the public interest, and especially in the interest of asbestos victims, that Congress used the full extent of its powers to preempt the current asbestos litigation system.

Finally, Mr. President, allowing personal injury lawyers and the unimpaired to continue to drain resources out of the system and away from those who deserve the resources would not only be unfair to the truly ill, it is likewise unfair to defendants who ask them to pay into a no-fault system, give up some of their insurance company, and still expose them to the litigation lottery. We cannot expect the defendants to bear the costs and risks if it fails the judicial process. This system will continue to take 60 percent of every dollar and waste it on lawyers' experts and administrative costs.

The Hatch-Frist-Miller bill will stop the litigation lottery in its tracks and instead replace it with a fair administrative process that treats all participants fairly and consistently.

I want to respond to a few statements made by my friend and colleague from South Dakota earlier this morning regarding S. 2290, the Fairness in Asbestos Injury Resolution Act of 2004.

Senator DASCHLE stated there was no reversion to the tort system. In fact, there is reversion to the tort system. It is one of the concessions we made. Should the fund become insolvent, then claimants with asbestos injuries who have not received compensation under the fund may pursue their claims in the courts. The statement that there is no reversion is simply wrong. I want to correct the record.

Senator SARBANES stated that we ''sprung'' the bill on the Democratic Senators and their staffs. Senator DASCHLE called attention to the total fund value. For the record, Senator DASCHLE's staff was informed of the new numbers last October. That was 6 months ago. Since October, there have been repeated and continuing discussions of these numbers over the ensuing months. We repeatedly asked the Democrats for a response to the numbers. We have received absolutely none. We repeatedly asked the Democrats for a legislative proposal—some language, an outline, a concept of a structure, something, anything. We received nothing.

As Senator DASCHLE knows, this so-called new bill that we allegedly ''sprung'' on him includes the very numbers we released months ago, the changes demanded by the Democrats, and the changes demanded by the unions. We have had 8 months of serious negotiations. I don't think it is justified for anybody to say they have been kept out of the process, we have not tried to accommodate them about these matters.

Mr. President, I have one more comment that I would like to make to senator DASCHLE's statements this morning. He stated that a lung cancer victim with 15 years of exposure would receive only $25,000 in compensation. He painted an incomplete picture which I would like to finish. First, that figure is the bottom of the range of compensation. Under the claims values in FAIR Act, claimants who were exposed to asbestos and still smoking will receive between $25,000 to $75,000 in compensation. And for the record, Senators LEAHY and KENNEDY have stated that they want $50,000 for claimants falling into this category. Mr. President, I have come here to discuss the FAIR Act. We have a chance to help those who have suffered from asbestos-related injuries for far too long. Many people have spent many months getting us to this point and I want to ensure that we have a complete picture of the bill for the record. We owe at least that much to those victims.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. CHAFFEE). The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, let me begin by, first of all, commending my colleagues on the Judiciary Committee. I am not a member of this distinguished committee. I had the good fortune of serving on the Judiciary Committee in the other body years ago, in the House of Representatives. I have great respect for my colleagues who serve on the Senate Judiciary Committee in either body because they deal with some of the most contentious issues before the American public.

It is not easy to be the chairman of that committee, regardless of which party is in the majority in the Senate. I have the utmost respect for my friend from Utah. He and I have spent many years serving in this body together. There have been countless pieces of legislation that we have worked on together that are the law of the land today. I have great admiration for him.

He is a legislator. I say that because there seems to be a shrinking number of legislators around here regardless of party affiliation. He is a legislator. That means someone who is willing to sit down and work out issues. I wish to begin by thanking and commending him for his efforts on this difficult subject matter, asbestos. This is an area in which I have had a longstanding interest, as many of my colleagues know, going back a number of years. This issue is of critical importance to my State of Conneticut, because it is the home of numerous small and large manufacturers, as well as several major insurance companies. They have a strong interest in the outcome of a resolution of this very perplexing problem of asbestos litigation and related issues.

I have a strong interest in trying to come up with a solution for, first and

foremost, victims of asbestos exposure. It is estimated that more than 27 million people who have been exposed to asbestos over the years.

Regrettably, we know there are many who will die prematurely because of their exposure to this product. In fact, last year alone, 10,000 people in this country died as a result of their exposure to asbestos. The numbers are truly staggering. We know there are over 600,000 past and pending cases involving over 6,000 businesses, that have been cited as defendants in these cases. And we know there are going to be literally millions of people who are going to suffer.

So we must attempt to provide a better answer than the present system which has clogged up our courts, which has denied too many victims—seriously impaired victims—of the kind of compensation they deserve. I have had a longstanding interest in trying to come up with a solution. We have gotten very close to such a solution.

Let me begin by reporting on the progress that has been made. There is a tendency to only discuss the areas where there is still disagreement, and I think that only tells part of the story. People such as Senator HATCH and Senator LEAHY, have worked tirelessly on this issue. The majority leader, Senator FRIST, and the minority leader, Senator DASCHLE and their staffs have also spent a great deal of time on this legislation. Senator DASCHLE has always kept his door open, and repeatedly tried to see if we could proceed with a meaningful negotiation process. Such a process must occur in order to bring the various parties together around a resolution of this issue.

There are many others who have been critically involved in this issue. We heard from Senator FEINSTEIN earlier and other members of the Judiciary Committee. Senator NELSON from Nebraska has also worked hard on this issue. Senator CARPER has also worked on this issue. There are many others who care about this issue and have spent a great deal of time on it. Senator SPECTER has been performing an invaluable service in trying to work out the administrative structure of the proposed compensation fund. I am sure I am leaving some of my colleagues out, and I apologize for that, knowing, as I do, that almost every State, without exception, is affected by this lingering question. When there are over 600,000 total cases, every State and Senator is affected.

Seventy companies have already declared bankruptcy on this issue alone because of the judgments that have come in against them.

As a result of those 70 bankruptcies, over 70,000 jobs have been lost from these companies. This is a major economic problem, as well as a major health issue that needs and demands resolution.

The good news is this: There are about five or six major issues involved in the question of whether we can establish a bona fide trust that would allow for fair and equitable compensation to those who have been determined to suffer from diseases related to exposure of asbestos. The five or six major issues are the following:

One, can we establish medical criteria which would make it possible to determine who has been exposed and to what extent have they been adversely affected as a result of that exposure. I thought that issue would never get resolved. This has not been an easy task. Can you imagine trying to bring doctors together with organized labor, manufacturers, and insurance companies, all sitting down and agreeing on what the medical criteria for this legislation should be? I am pleased to announce that months ago we were actually able to reach an agreement on the medical criteria. Amazingly, the issue of medical criteria has been resolved.

The second issue is whether we could create an administrative system to process and review claims. This is also not an easy undertaking. Thanks to Senator ARLEN SPECTER of Pennsylvania and thanks to his constituent, Judge Becker, and, by the way, the involvement of a number of our Senate colleagues under the auspices of Senator SPECTER's leadership—we have reached an agreement in this area we think is going to work.

Creating an administrative system is a major accomplishment. Many people thought we would never be able to resolve this issue. On two of the major five or six issues, we have already achieved results. But it took weeks to work out the details behind these agreements.

An asbestos compensation trust fund idea is complex. It is very complex. When we envision a trust fund that might have to last for 30 years or more, that must deal with thousands and thousands of cases of people who have been exposed to asbestos, it is a serious undertaking. Every comma, every period, every semicolon can and does mean something. So we have to be very careful in how we draft this legislation.

We have hundreds of manufacturers who have been, and continue to be affected by what we are doing. There are major insurance companies that clearly must be involved and will contribute to a trust fund, as the manufacturers will be. Organized labor, representing the hundreds of thousands of victims, must ensure that a trust fund is going to have adequate funding, and that monetary awards are fair and efficiently provided.

We have seen the consequences of the current system. In fact, in the Johns-Manville trust resolution, the trust that was established under the name of that particular company, is a example of the problems with the current system. They believed that the amount of money initially placed put into that trust was going to more than adequately provide for the victims who have been exposed under the Manville situation. As it turns out today, the Manville trust is only paying about 5 percent of the compensation victims should be receiving.

It went very wrong, not because the people who put it together planned it that way, but nevertheless that is what happened. No one I know of wants that to happen here, but it makes my point that this is a complex issue. And that getting this right is very important. We must be sure that this solution is going to work well. So it takes a little time—and in my opinion, it is time well spent.

I do not know why at this very hour we have this legislation before us. It is not ripe yet. It has not matured enough yet. There are still huge issues outstanding.

Obviously, one of the major open issues is the overall dollar amounts. I know it sounds like a lot of money—and there is a lot of money at stake here. But when we start talking about 25 or 30 years of a trust fund's existence, the difference is somewhere around $115 billion and $155 billion, give or take a billion here and there. As Senator Everett Dirksen said: A billion here and a billion there and pretty soon you are talking about real money. This is real money. We are not talking about hundreds of billions of dollars difference. We are talking $20 to $30 billion or so over 30 years, spread among a large number a defendant companies and insurers who face greater losses and greater uncertainty under the current system.

It seems to me if we get actuaries together, and agree at the universe of potential claimants, and provide them fair compensation, we should be able to come up with a neutral number to satisfy the needs of expected claimants.

We have changed approaches from where we started at the outset of this debate. We initially tried to create a bill that was ''evergreen,'' that is, that it would be the complete solution to this problem for as far as the eye could see in the future. However, we began to realize the difficulties of creating a fund that lasts forever. Several factors caused us significant uncertainty. For example, we still import asbestos in this country. There is still asbestos being used, or at least people are being exposed to it even though we now know the problems that result from exposure. So the idea that we are going to have a final number in perpetuity, I think, was abandoned by all sides.

We have contended that this number is somewhere between $115 billion and $155 billion. If that does not end up being right at the end of the day, then we ought to resort back to the present tort system to solve the problem.

I just heard my colleague from Utah say his bill includes that provision. With all due respect, I must disagree with my friend from Utah because the provision in the bill being offered by the Senator from Utah and the Senator from Tennessee, the majority leader, has a 7-year gap between when the trust fund may run out of money and

when the tort system could be used by a victim.

Now, that is hardly reassuring to the victims and their families that the system that presently is in place which provides them some financial relief will be taken off of the table in the event that the trust fund becomes insolvent.

Let me quickly point out as well, that these numbers of 115 or 155—if one takes the high end or the low end, are hardly unreasonable. The Rand Corporation, which is hardly an organization that identifies ideologically with the left or right or Democrats or Republicans, has estimated that the cost of the current problem is somewhere around $300 billion. So at the outset we are talking about a trust of only $155 billion.

While we disagree over actual dollar amounts at this point, I believe that people of good will, sitting down, can come to an honest compromise that would satisfy all parties involved in this debate.

Another open issue is the value of the claims themselves. If we are able to reach agreement on the medical criteria and able to reach agreement on an administrative system, it seems to me, again, that good people who care about this should be able to resolve this issue and provide fair compensation to victims of asbestos.

Another outstanding issue that needs resolution is what to do with pending claims. There are some claims that have been adjudicated. Some are completely adjudicated, others are only in the discovery process. I do not want to get too technical legally, but I think most people would understand there are some cases that are already mature in the judicial system. Determining at what point in the judicial process, should cases be abrogated and claimants directed into the trust fund is a difficult question. When is the judicial process allowed to be completed where those claims exist? I do not have an answer for that one today, but, again, I think people of good will who care about this issue and realize what a huge problem this is could come to some thoughtful, reasonable compromise on how to deal with pending claims.

That is not the complete universe of all the problems, but those are the major ones. Two of them we have solved. Three or four of them deserve additional time and effort to resolve. Certainly the intent of the amendments adopted in Committee by Senators FEINSTEIN and BIDEN that addresses pending claims and returning back to the tort system in the event of insolvency are ideas that should be reconsidered and adapted. There may be others ideas that are also helpful.

The point is there are people making suggestions to resolve these questions. I do not understand why this body is being asked to make a definitive decision on this bill that none of us have seen because it was introduced only 2 or 3 days before the last senatorial recess. We are being asked to accept voting on cloture on this matter on Wednesday or Thursday of this week. I might point out that last November or early December we reached an agreement, a compromise, on how to proceed to the class action issue. I happened to be one of those involved in that negotiation. Why do we not bring up that bill? That bill is ripe and ready to go, not that many of my colleagues would support it. But for those of us who are willing to support a class action reform bill, we reached an agreement on that 4 or 5 months ago, and yet that bill is not being brought up. Why not? That bill is ready to go. This bill is not ready to go.

Why are we taking 3 days in a very abbreviated session of the Senate, when we do not have much time remaining, some 30 days, to bring up a matter where there is so much disagreement that could be resolved if we would spend the time doing it as Senator SPECTER has done, as Senator DASCHLE has done, and as Senator LEAHY has done? I know Senator HATCH and his staff have also worked tirelessly on this topic.

Legislating on a matter like this is hard work. It is labor intensive. Any one of my colleagues, Republican or Democrat, who has been in the Senate for any length of time will say that on major legislation, particularly legislation that is precedent setting such as this is, people are required to roll up their sleeves and put in a tremendous amount of hours to resolve these matters. In my view, it cannot be done thoughtfully or carefully by engaging in open-ended floor debate with amendments flying around that no one really knows the implications of, some of which are passed 51 to 49, others defeated 51 to 49. When we are dealing with something as serious as this, where literally thousands and thousands of lives depend upon receiving adequate compensation, we know we are dealing with a very complex problem.

I urge that a cloture motion not be filed. I know one has not yet been filed, and my strong appeal to the majority leader would be please do not file this cloture motion. There is still time. This is only April. I presume we are going to be here until sometime in early October. Give us the chance, insist upon people meeting and trying to resolve these issues. It may come down that a few of these matters are not resolvable through negotiation, and the only way to resolve them is by having some floor votes on them. I accept that may be the final determination. But we ought not to jump to that when there still is an opportunity to resolve some of these outstanding questions.

I have spoken to organized labor, John Sweeney, and his representatives. They want a bill. It is their membership, many of them, who suffer from the exposure to asbestos. It is their membership that is losing jobs in companies that are declaring bankruptcy. They want a bill, but they want to make sure when they have a bill that the resources will be there to provide adequate compensation.

By and large, the insurance industry, with some exceptions, wants a bill because they realize that the current system is flawed and could cause untold economic hardships on some of these companies. It could cause some of them to collapse, and I am not exaggerating when I say that. They are very interested in getting a bill. I know the overwhelming majority of manufacturers, those that were either involved in the production or use of asbestos over the years, in most cases before anyone knew of the great harms caused by this product, they want a bill.

This is one of those unique situations where all of the parties, all of them, and including, I might add, many of the trial lawyers involved in this area, understand some different resolution of this issue is needed other than the present tort system. Obviously, that is not the view of everyone who is a trial lawyer, but many of them have already spoken out on this issue.

So we have a unique political environment where the major participants are anxious to get a bill. I rarely find that. Normally one finds people highly divided where labor or business is at complete opposite ends of the spectrum on a matter that is before us. Here, nearly all stakeholders want a bill. Instead of sitting down and keeping people at the table and working it out, we are prematurely bringing up something causing this bill likely to fail, and fall before we have an opportunity to resolve the differences. As I said a moment ago, why not bring up class action? Why not bring that up? That is ready to go. Where is the business community that has said to me over and over again: Why don't we get a class action bill here? We have been ready since November and December. Here it is April and nothing has happened on class action. Yet you bring up and consume 3 days of time on the floor of the Senate with a bill that everyone knows, if you invoke cloture or file a cloture motion on the motion to proceed, it is going to fail. And it should fail. It should fail. I say that with deep regret.

I have committed the time of staff members and my own time over the last number of years on this issue. I think to come this close to resolving a major issue affecting the lives of hundreds of thousands of people and their families and attempt to address it in a premature fashion is a huge mistake.

So my appeal to my colleagues is: Sit back and work this out. It is hard, but it can be done. And, if we get near the end of the session and we have not been able to resolve everything, either wait until we get back in January or bring it up and leave a smaller number of issues out on the floor to be resolved

by votes on the floor and healthy debate. But don't jam this now, particularly when we know the outcome, taking up the valuable time of this body on the floor where the time can be better used to take up issues where there has been agreement, at least agreement by a significant majority of us to move forward on the legislation. That has been done now on class action.

Why doesn't the majority leader come over and move to proceed to that bill so we can vote on it? We have been ready for that now, as I said, since 3 or 4 or 5 months ago. There has been no action at all. No action. Why not? Why is that bill not on the floor right now, being debated and discussed?

Of course we have seen the same thing with medical malpractice. There is no effort to negotiate it out. There is a proposal on the Democratic side. It is different from what the majority has proposed, but not that different. You could bring those two sides together and resolve the issue. Doctors deserve better than they are getting. They are being told the Democrats are stopping everything. Why is it the majority refuses to even sit down and try to work out the differences?

I stand ready. My staff does. Again, I am not a member of the committee. Obviously, Senator HATCH and Senator LEAHY, as I mentioned earlier, have done a tremendous amount of work on this and deserve a great deal of credit for trying their best at this.

The leader on this side, politically, is Senator DASCHLE. I have been with him on numerous occasions when we met with the manufacturers, met with the insurance industry. As Senator DASCHLE has said over and over again, his door has been open to do whatever it takes to try to get a bill done. I know from personal knowledge he has offered on numerous occasions to meet with the majority leader and others to try to figure these things out.

I mentioned Senator SPECTER already. Senator BIDEN, obviously, Senator FEINSTEIN, and a number of others have been involved in this, trying to get this done. My hope is that the majority leader will not wait until Thursday. Listen to us over here. We can get this done. It could be a proud moment of this Senate's session, to have actually come up with an answer to a major problem in this country. We are getting very close to resolving it. It will take a little more work, in my view, over the next coming weeks, but it could be done.

My plea this afternoon would be that filing a cloture motion on the motion to proceed would be withheld, that we bring up other matters that are ripe and ready to go forward, and send the people back to work on this bill and let's see if we cannot draft a piece of legislation of which America can be proud.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

JOBS ACT

Mr. REID. Mr. President, right before we had our break we were asked, Senator DASCHLE and I, to see what we could do to move the FSC bill along. The majority has affixed the name the jobs and opportunity bill, or something like that.

We have always known the importance of this legislation, and we did our very best to move this along. It was held up initially because we wanted a vote on overtime. The majority, for reasons I fully don't understand, refused to allow us to have a vote on this.

As the Chair will recall, this amendment passed previously. What our amendment would do is say the President does not have the right to take away the ability of American nurses, firemen, police, and a total of 8 million people, from getting overtime. In effect, what we have been told by the administration is they were going to promulgate a rule that would take away overtime pay for people who make more than $22,000 a year.

We wanted a vote on this. You can't do that. It passed once; it was stricken in a Republican-only conference. The House passed a resolution saying they wanted their conferees to do the same thing the Senate did and stop the President from doing this.

We have been told by the majority—the distinguished majority leader has come out here on a number of occasions and said this is a must-pass bill. American businesses are getting hurt. So Senator DASCHLE and I worked for the better part of a day calling individual Members. We had 75 amendments. We worked to get them cut down. We not only cut down the amendments to 18, but we have time agreements on these amendments, as little as 5 minutes on some of the amendments. We clearly could have finished all of these amendments in 1 day. All of them wouldn't require votes but, if they did, we would be willing to put in an extra-long day. Therefore, we, through our Democratic leader, went to the Republican leader and said, Here is what we have. Some of these amendments, quite frankly, would not require votes and some would not even be offered. So we wait one night, come back to the majority and say, We are willing to do this deal. We know this is an important bill, that tariffs are being applied against American manufacturers and other business people; what is the problem?

To make a long story short, we were told the majority had 50 amendments with no time limits on them whatever.

The FSC bill is not going forward not because of anything we have done. It is because this Congress, I am sorry to say, using the Harry Truman term, is a do-nothing Congress. We do not do anything. If we have to work past 5 or 6 o'clock at night, that is not a good idea. We cannot even consider coming in and voting at noon on Monday. To think we could vote past 9 or 10 o'clock on Friday, even on a bad day, is out of the question. We usually vote Tuesday afternoon and finish the votes as early on Thursday as we can. This is not a good way to accomplish things. That is why this Congress is doing nothing.

I don't want another word ever said about the FSC bill not going forward because of the Democrats. We want to go forward. We have done everything we can to move this forward. We have wasted on this piece of legislation many days of legislative business when we could be working on things that need to be done in addition to that.

Gasoline prices in Nevada have increased 46 cents a gallon since the beginning of the year, almost 50 cents a gallon. I have not checked today. They may be up another 4 cents. Since the first of the year the prices in Nevada have gone up 46 cents per gallon.

I talked to a contractor who is the largest contractor, he says, in northern Nevada, the Reno area. Diesel fuel prices for his company are costing his company $7,500 a day in addition to what he was paying at the first of the year. This is in addition to the mess we have with steel prices. This is a tremendous burden.

There is no doubt the price of crude oil has contributed to higher prices in Nevada and throughout the country. However, the outrageous 46-cent-a-gallon increase in Nevada since January is not driven by crude oil but corporate greed and profit.

We are used to it in Nevada because during the Enron debacle we were told it was supply and demand. It had nothing to do with supply and demand. It had everything to do with Enron reaping windfall profits. Enron told consumers it was a matter of supply and demand. But it turned out Enron was manipulating the supply of electricity.

In Nevada we get all of our gasoline from California refineries, so any problem with the supply in California is a problem for Nevada. This is a lot of talk about the tight California gasoline market, where prices are typically 20 to 30 cents above the national average. We hear about the law of supply and demand all the time driving prices higher.

One thing I know for certain about the law of supply and demand with the Enron situation, is that it cost the Nevada ratepayers nearly $1 billion during the electricity crisis almost 3 years ago. Based on this bitter experience which is still being litigated in the courts, I was concerned Nevadans might be getting ripped off again when gasoline prices went through the roof early this year. I asked the Federal Trade Commission to investigate these wild price increases, particularly with an eye toward any possible manipulation of gasoline markets. After 5

weeks, the FTC responded by saying prices in Nevada were ''unusually high'' and above predicted norms. An informal FTC investigation is still looking into the cause of the price hike.

There are spikes FTC says they cannot understand. They are having a hard time showing collusion or market manipulation, but they know something is wrong. As they said, the usually high prices are above predicted norms.

I don't need an investigation to tell me big oil profits have soared at the expense of working families. These markets are not competitive when a handful of companies can decide what price they are willing to sell for and what price a consumer is forced to pay.

As a nation, we need to address both the supply and demand side of the energy equation to promote a truly competitive market. On the demand side, we have to increase the fuel efficiency of cars and promote public transit. Maybe that is wishful thinking. On the supply side, we can increase the use of alternative fuels and renewable energy.

In the short term, we have to increase supply. We can do that, in my opinion, by having the President at this time, when the Saudis and others are turning off the spigots and making the supply less—we can increase supply by pulling oil from our petroleum reserves. We need to do that. President Clinton did it. The first President Bush did it.

In the long term, we have to do something with alternative energy. We have to. It is important. I was encouraged before the recess when the energy tax incentives were added to the FSC bill, which I just talked about. I applaud Senators GRASSLEY and BAUCUS for the excellent provision dealing with section 45 production tax credit for renewable energy resources that expands and extends the credit for wind, geothermal, solar, and biomass energy. We must harness the brilliance of the sun, the force of the wind, and the heat within the Earth. By using the bountiful resources to diversify our energy supply, we protect the air we breathe and we protect consumers from these wild price swings.

We cannot lose sight of the fact renewable energy will make our Nation more secure because it is made in the United States of America. I was disappointed to learn we will put off consideration of the FSC bill, even though we have agreed to the finite list of amendments.

The other thing the President can do on a short-term basis is have the Saudis provide more oil. We are told in Woodward's book he has a deal to do this in the fall. Move it up, make the deal a little earlier.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. CRAPO). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, it is time for us to bring the asbestos bill to a floor vote and to bring it to discussion so we can continue the progress that needs to be made on this important bill. As I said earlier this morning, every day we do not act is a day victims are not receiving appropriate compensation for what they need and deserve.

The bill we put forward provides a reasonable solution to the asbestos litigation crisis and has numerous consensus-building changes that have been added to the underlying bill, many made at the request of Democrats and representatives of organized labor.

What has emerged is a collective effort to date on a proposal that comes from the original S. 1125 and has critical modifications that have been added on the counsel of stakeholders. As I said this morning, there will be a lot of constructive proposals put on the table through the amendment process from Senators on both sides of the aisle to further refine and improve this bill.

I encourage this process. We have had numerous discussions throughout the day, solidly since this morning. I have had the opportunity to talk to the Democratic leader on several occasions discussing both options and how we can best bring this bill to appropriate closure. We will continue these conversations over the course of this evening and tomorrow. A lot of stakeholders are at the table discussing issues that are very important.

Reference has been made to Judge Becker on numerous occasions and over the course of the day and in the statements this morning, and of the mutual respect both sides of the aisle have of the work he has done to date. I would like to continue those discussions tonight and tomorrow to see if there is some way we and the Democratic leadership can put a process in order where we can help mediate some of the differences we all know exist.

My colleagues on the other side of the aisle say we need more time, and I respect that. In truth, we have made real progress, and we are getting real focus on a very important bill. We have been discussing and negotiating and changing and working on this bill for over a year now, and I believe all our colleagues are coming to the table in earnest at this point.

We are going to be filing a cloture motion. The cloture vote will give everyone an opportunity to put their views on the record as we go forward and continue to work on this bill.

Again, every day we do not reach an agreement on this bill is another day victims of asbestos litigation malfunction are suffering. Therefore, I believe working together we are going to be able to bring resolution.

Having said that, we will be filing a cloture motion.

CLOTURE MOTION

Mr. President, I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to calendar No. 472, S. 2290, a bill to create a fair and efficient system to resolve claims of victims for bodily injury caused by asbestos exposure, and for other purposes.

Bill Frist, Orrin Hatch, Gordon Smith, Lamar Alexander, Saxby Chambliss, Ted Stevens, Michael B. Enzi, Trent Lott, Kay Bailey Hutchison, Susan M. Collins, Pete Domenici, Rick Santorum, Jon Kyl, George Allen, George Voinovich, John Ensign, Wayne Allard.

Mr. FRIST. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, we will continue discussions tonight and tomorrow. We will talk with the Democratic leadership as we go forward over the next several days. I am very hopeful we are going to work out a suitable and appropriate process to address these important issues.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, I have been listening to the discussions today on asbestos litigation, and there have been some provocative statements made on both sides. This is a very important issue. I have to say I have some sympathy for the businesses. But the sympathy I have for the businesses is overwhelmed by what I have seen in the personal suffering of the people who have been injured, some of whom are dead. We do not know how many thousands will die this year. Estimates are probably 10,000 from asbestos.

We still import thousands of pounds of this poison into our country. So I hope all the people who have good intentions—I know they all do—talking about this asbestos reform will, first of all, understand Judge Becker, whom I have never met, is not a Senator. It is nice he has agreed to come in and work on these proposals, but Judge Becker is not a Senator, I repeat. He is not a member of the staff. I do not know who he is meeting with, why he is meeting with them. There are a lot of judges in America, retired judges. It so happens this one is from Pennsylvania. There are retired judges in other places who have the same expertise he has.

I listened to Senator HATCH speak today. I listened to Senator LEAHY speak today. We cannot write an asbestos bill in the Senate. We cannot write it outside here in some office building downtown. The only way I will ever feel comfortable about legislation dealing with asbestos is if it goes through

the channels it is supposed to go through: the Judiciary Committee.

We have men and women on the Judiciary Committee, both from the majority and the minority, who have spent years working on this issue. They are certified experts. They not only understand litigation, they understand legislation.

So I hope everyone understands it is good people who are interested in this legislation do everything they can to weigh in on this issue, but I hope we all look to the Judiciary Committee to come to us with a product. It cannot come out of the Environment and Public Works Committee that I work on. It cannot come out of the Appropriations Committee. It cannot come out of the Governmental Affairs Committee. It cannot come out of any other committee. It has to come out of the Judiciary Committee.

But we have people who have worked on this issue—not only the two leading members of the committee; that is, the ranking member and the chairman—but also people on that committee who have listened to hours and hours and days of testimony. Maybe they should listen to some more. But this is legislation we are talking about that is going to have a price tag on it from $150 billion—I should say, the figure in this bill is a very ridiculously low figure of $109 billion, to maybe as much as $700 billion or $800 billion, maybe $1 trillion. So this is not something we need to rush into.

We need to help victims of asbestosis, mesothelioma. I would hope we would do as the State of Illinois has done, have some type of pleural registry so people who have worked around asbestos and are afraid they are going to get sick would be able to go on to that registry so the statute of limitations is not tolled.

In short, the Judiciary Committee has jurisdiction over this legislation, and this is from where the legislation should come that we deal with on the floor, not some retired judge, or not a Senator who feels he knows more about it than others. I am not pinpointing any Senator. I am saying there are a lot of people who think they have an interest in this issue. Everyone has an interest in this issue. All 100 Senators care greatly about this issue. Some feel more strongly about the businesses than I do; others feel for the victims.

But I would hope we do not try to rush into this and do something that is written here or downtown someplace; that whatever we do, whatever suggestions, whatever people feel will improve our ability to pass this legislation, they will work through Senators HATCH and LEAHY and have the full committee vote on what we do.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I did not hear all the Senator from Nevada had to say about this subject. I have listened to some of the presentations this afternoon. I want to make a couple of comments about the asbestos issue and then I want to talk about a couple of other unrelated matters.

First, on the asbestos issue, I am one of those Senators who has in the past year or year and a half written letters to my colleagues, to Senator FRIST and to Senator DASCHLE, in support of efforts to find a negotiated solution.

On July 31 of last year, I sent a letter to our joint leadership urging that we reach a bipartisan compromise on the issue of asbestos. That letter was signed by a number of other colleagues: Senators MILLER, BREAUX, BEN NELSON, BAUCUS, CARPER, KOHL, LINCOLN, LEVIN, and STABENOW.

In late October, I sent another letter to Senators FRIST and DASCHLE urging that we seize the moment and pass an asbestos bill, but recognizing that in order to do that, there needs to be serious negotiation. All of the stakeholders—and there are big stakeholders on this matter—need to come together to resolve the issues in a way that reflects a true compromise.

There are a couple of things that are necessary to say at this point. One, I believe there is an urgency to deal with this issue. The failure to deal with it causes great economic uncertainty for companies and for our economy. The failure to deal with it means there are some who are sick as a result of having contact with asbestos during their lifetime and who will not be compensated. There are others who are not sick who will receive compensation. There are lawyers in the middle of some of these suits who will receive a disproportionate percentage of awards. I don't think this system works at all. The system is broken.

For that reason, I believe it is in the interest of everyone for us to have legislation in the Senate that can truly reflect a bipartisan compromise. But the bill before us now is not such legislation.

I was surprised, frankly, the week before last, just before the Senate took a 1-week break, to read statements made on the floor of the Senate. I shall not ascribe them to any particular colleague, but those who want to know can look in the RECORD.

One of the colleagues who brought this bill to the Senate floor suggested that the asbestos negotiations were being blocked because the personal injury bar would not otherwise put up $50 million for JOHN KERRY in the election. This colleague of mine said that such a suggestion, if true, was ''pathetic.'' Well, these words are an affront to all those colleagues on my side of the aisle who have been working very hard to get a good asbestos bill through the Senate this year. And these words are hardly appropriate from someone bringing a bill to the Senate floor, for which he seeks bipartisan support.

This is not a serious proposal. We understand that. Senator SPECTER, who I think has done much of the serious work in the Senate trying to bring people together and reach a compromise, does not support this proposal. Let me read what Senator SPECTER said, again a Member of the majority party:

> I decline to join with Senator FRIST and Senator HATCH in their substitute bill because I think it is the better practice to try to work through these problems.

I completely agree with Senator SPECTER. I think the approach to have taken on this would have been for Senator FRIST to have engaged with Senator DASCHLE and have all of the stakeholders work over a period of months to reach a compromise. And it is not too late to do that.

In recent months, Senator DASCHLE has attempted numerous times to meet with Senator FRIST to hammer out these issues, but those meetings have not taken place. I don't know all that has happened with respect to that, but I do know this: Putting a bill on the floor of the Senate that is far short of a true compromise with the stakeholders is not going to solve the problem.

Yet this is an urgent problem that needs solving. I believe, as some of my colleagues do—Senator CARPER, for example, on my side, who has worked very hard on this issue, who believes very strongly, as do I—that there needs to be a solution. I certainly believe that if we end this session of the Congress without addressing this issue, without passing some legislation, we will have failed. All of us will have failed.

It is simple enough to bring legislation that is unacceptable to the Senate floor so you can then have a press conference and say: Well, the other side killed this legislation. That is simple enough, but it does not address any problem or solve any issue.

My hope is that in the coming days, the joint leadership—Senator FRIST, Senator DASCHLE—might join with the stakeholders in this issue around a table and have some hardnosed negotiating and hammer out and develop a proposal that represents a true bipartisan proposal that represents a true compromise by all of those engaged in this issue so that we can pass legislation. Bringing what has been brought to the floor of the Senate the week before last and filing cloture on it is not a way to legislate. They know and we know that this means this legislation does not advance. I fail to see how that solves a problem or begins to address an issue that I believe is urgent.

Once again, there are some principles involved. One, I don't believe that people who are not sick and have never been sick should be compensated. Two, I believe those who are sick should be compensated and compensated fairly and not have to go through a tort system and spend a lot of money for lawyers to be compensated. Three, I believe that the American business community deserves some certainty and that certainty does not exist at this point. That is why I believe a trust fund of sorts that is set up and established with appropriate medical criteria and other definitions is the best

way for us to resolve the issue. I believe we should get to that point—the sooner, the better. But we have wasted a great deal of time.

The process that has now been embarked upon by the majority leader will almost certainly guarantee we will not get to that point. I regret that because I hope at the end of this process, this Congress will understand the urgency for workers, for business, for all of the stakeholders to pass asbestos legislation.

THE OFFICE OF FOREIGN ASSET CONTROL

Mr. DORGAN. Mr. President, I would like to speak for a moment about a subject I discussed with the Treasury Secretary this morning when he testified before my Appropriations subcommittee. We are fighting terrorists who want to attack this country. They have killed thousands of innocent Americans. They wish to attack this country and kill innocent Americans once again. It is an enormous challenge to fight and defeat terrorism. It takes all of our energy every day in our law enforcement areas, in the intelligence community. It takes a lot of coordination and good work. It takes getting it right.

So we have the homeland security office. We have the CIA. We have the FBI, the Defense Department. We have everybody working on these issues—the U.S. Customs Service, and a little agency in the Treasury Department called OFAC, the Office of Foreign Asset Control. These are the people whose principal responsibility is to try to track the financial transactions happening between terrorists, to shut down the financial connections that finance terrorist activities.

But that is not all that is done in the Treasury Department with respect to OFAC. This rather small office is doing other things. Their principal job ought to be to track terrorism and to shut down the financial root that funds terrorist activities. But there are some at the OFAC who are doing other things. Let me describe them.

First, from a speech in December by the Under Secretary of Homeland Security, in Miami, a speech by Asa Hutchinson, where he talked about the crackdown on enforcement of the U.S. embargo against Cuba and goes into some detail; and then the Secretary of the Treasury, also in Florida, on February 9 gives a speech. The Office of Foreign Assets Control at Treasury, he said, is working closely with customs agents inspecting all direct flights to Cuba at Miami, JFK airport, Los Angeles Airport. That is hundreds of aircraft, tens of thousands of passengers, and agents are being meticulous.

Well, I wonder if we are checking quite so closely with respect to trying to track terrorists. You know what they are looking for? I will give you an example. They are enforcing the embargo that we have with respect to Cuba, and part of that embargo is to prohibit Americans from traveling in Cuba, so we have all of these resources and personnel at airports tracking every passenger and every plane to see if someone has done something wrong. This is an example of what they discovered.

This agency in the Treasury Department that is supposed to track terrorism tracked down Joanie Scott. She went to Cuba 4 years ago to distribute free Bibles. Four years later, the folks who wear suspenders at OFAC at the Treasury Department decide they are going to slap her with a $10,000 fine because 4 years ago she went to Cuba to give away free Bibles. She said she didn't know she needed to get a license. Four years later, they slapped her with a $10,000 fine. That is not all of it.

This is a picture of Joan Slote, a 74-year-old grandmother, who is a bicyclist. She is a senior olympian. She rides bicycles all over the world. She happened to ride one in Cuba with a bicycling group from Canada. Guess what happened to Joan Slote? She got fined by OFAC, this little agency in Treasury that is supposed to be tracking terrorists. They are tracking little grandmothers who are riding bicycles in Cuba, in order to punish Castro and enforce the travel ban. They fine American citizens for traveling in Cuba. So she gets fined $7,630 for riding a bicycle in Cuba.

These are some folks who are disabled athletes. They got to go to Havana about 2 years ago for the games for disabled athletes, the world games. They applied again this year, but as the Treasury Secretary and Mr. Hutchinson and others have said, including President Bush, we have this crackdown now on travel to Cuba; so these folks were denied a license to compete in the games for disabled athletes in Havana. The result is that they lost the $8,000 they paid to a travel agency for transportation to Havana to participate in world team sports for disabled athletes. Quite the terrorists, aren't they?

So we have people down at the Treasury Department tracking these folks, a retired grandmother, a woman who takes free Bibles for distribution in Cuba, to see if we can find them. That is what is going on—levying fines of $5,000, $10,000.

There is another man from the State of Washington who decided his father's last wish was to be buried or have his ashes distributed in the church he once ministered at in Cuba. Cevin Allen of Washington State traveled to Cuba to bury his father's ashes on the church grounds where his father once ministered. They decided to fine him $20,000.

That is what they are tracking down at OFAC. They ought to be ashamed of themselves. Their job is to track terrorists.

Let's look at what they have done. They have people stationed at airports. They have trained Homeland Security agents. Hundreds have been trained to do this. Here is what they have nabbed with 45,000 passengers. They have actually worked overtime to thwart terrorists importing cigars from Cuba.

On October 10 of last year, they had this directive from the President and, boy, they went at it. Homeland Security and OFAC at Treasury grabbed this issue. They found that 215 of the 45,461 travelers to Cuba were suspected of taking a vacation. Maybe that is a felony. They were suspected of taking a vacation. What an awful thing. And 283 tobacco and alcohol violations were found. The Homeland Security spokesperson, Christine Halsey, said each violation involved a small amount of rum or cigars; 245 are going to take a vacation, and a small number are bringing in rum. There were 42 narcotics seizures, but it involved prescription drugs, not heroin. There was one hazardous material violation. We have this ramp-up and we are supposed to protect America against terrorism, and you have these folks in green eyeshades trying to levy fines on Americans, and you have agents at airports trying to see who comes back from Cuba, and who traveled illegally so we can fine them. One hazardous material violation was discovered. It was apparently a carbon bioxide canister, which was probably used to add fizz to seltzer water.

Does this sound stupid? It does to me. That is a harsh word. Sometimes our public policies seem flatout dumb. We are confronted with the specter of terrorists who want to kill Americans, cross our borders and commit acts of terror. Yet we have people at airports, Homeland Security agents, and OFAC trying to track little old ladies that went on bicycle trips in Cuba. What are they thinking at the Department of Treasury? Is that the way they want to use their resources?

All of us know that lifting the travel ban to Cuba would happen instantly if we had a vote in the House and Senate. The only way they prevent it is to prevent a vote. But to use assets at the Department of Treasury, agents are supposed to be tracking terrorists, but instead are tracking little grandmothers riding bicycles, or women distributing Bibles, or a son who wants to bury his father's ashes at his home church in Cuba. That defies description to me.

So I am going to find a way during the appropriations process to find out how many resources they are using at the Department of Treasury to do this, and if they don't want to use them properly, they should lose them. If they want to keep them, they ought to use them to protect us against terrorists, not to slap a fine on a grandmother who rode a bicycle in Havana. I think that is nuts.

As we go into the appropriations process, I want to bring attention to that single issue. That is an important issue, and one that I think ought to be dealt with.

I wish to make a comment on an additional issue today. We are heading into an appropriations process. We

have a huge budget deficit, significant fiscal policy problems. Three years ago, it looked as if there were going to be surpluses forever. Now we have the biggest budget deficit in the history of this country. There is no prospect in sight of anything resembling a surplus for the next 10 years and beyond. Despite all that, we still have some needs in this country. We need to find a way to meet them.

With respect to a number of functions, it is Katie bar the door, whatever they need. We are spending $100 billion more for defense than we used to spend. I understand that. We are spending $130 billion already in Iraq, $5 billion a month, $4 billion in Iraq, $1 billion in Afghanistan. Nobody is being asked to pay for it. Increases in homeland security spending, I understand that. Tax cuts, tax cuts, and more tax cuts, and a President who says: Let's make all of them permanent. I understand why he is saying that as well. I don't support it.

I think someone who makes $1 million a year is fortunate, and good for them. I am all for them, but suggesting they should have a $123,000 tax cut per year on their $1 million salary, at a time when we are up to our neck in deficits, in my judgment, defies description.

Let me mention one other issue that I think we need to deal with—the issue of the Indian Health Service. I want to show a picture of a little girl named Avis Littlewind. She died 2 weeks ago. Her aunt said she took her own life around noon in her home. She missed 90 days of school since the start of the school year. She is a 14-year-old girl who apparently felt there was no hope. She lives on an Indian reservation. On the reservations, there are precious few resources to deal with the kinds of problems this young girl obviously confronted—one psychologist, a social worker, no psychiatrist, no automobile to provide necessary transportation.

There is a crisis in resources to deal with these issues. A young girl takes her own life and nobody seems to say much about it. It is just what happens. The fact is, this should not happen. It should not ever happen.

I remember speaking one day on the floor of the Senate about another young girl, a Native American, a young Indian girl, age 3, placed in a foster home, but they did not check out the foster home before they placed her there. The caseworker worked 150 separate cases and did not check out the foster home.

This young girl had her nose broken, her hair pulled out by its roots, and her arms broken at a drunken party. She will never outlive the scars of that beating she took. Why? Because one person was handling 150 cases involving children.

We have a full-blown crisis on Indian reservations in this country dealing with the basic social services that every American family ought to be able to expect to access. When a young girl has serious problems, serious emotional difficulties, and needs help, that young girl ought not to take her own life at age 14 because help is not available. This is a better country than that.

When we come to funding the Indian Health Service this year, we can no longer pretend Third World conditions do not exist on some of the Indian reservations in this country when it comes to health care for kids. We just cannot any longer pretend. Lives are being lost, lives are being ruined, and we can do something about it.

I am going to have more to say as we get into the appropriations process, but I did want to simply say there is a tragedy that is unfolding every day, every hour in parts of this country that are in America's shadows. Out of mind, out of sight for some, but not for all. We, in this Congress, must shine a light on these problems and begin to solve them.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CORNYN. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for such time as I may consume.

The PRESIDING OFFICER. Without objection, it is so ordered.

PATRIOT ACT

Mr. CORNYN. Mr. President, I rise to speak about the PATRIOT Act, a subject which has been much misunderstood. I think some of the misunderstanding has been perhaps just from lack of information or has been misinformation that has been spun in an effort to confuse people and perhaps even to scare people about what is in this important legislation. Indeed, we are all committed to making sure not only that our Nation is secure, and I believe the PATRIOT Act has contributed tremendously to improving the security of the United States of America, but at the same time we have a fundamental commitment in this country to civil liberties. I believe, and I think the American people believe, the Founders of this country believed firmly that we can have both our national security and our civil liberties. Particularly, in a time of war such as we are in now, while there will be some tension, we need not sacrifice our civil liberties.

Nevertheless, there are those who would play politics with this issue in an effort to score political points, or I think others who perhaps for more benign reasons might just be not very well informed and kind of go along, not really knowing the truth. So I want to talk just a few minutes about the PATRIOT Act and what it has done.

Of course the PATRIOT Act has passed overwhelmingly, just a short time after the terrible events of September 11. Indeed, the purpose of the PATRIOT Act was to give law enforcement the tools and our counterterrorism experts and agents the tools they needed in order to prevent future 9/11s.

Indeed, the evidence is clear that the PATRIOT Act has served that important purpose. The Department of Justice has broken up four terrorist cells in the United States since September 11, in Buffalo, Portland, Detroit, and Seattle. It has filed criminal charges related to terrorism against more than 300 individuals. So far it has secured 176 convictions or guilty pleas. Perhaps the best evidence of the success of the PATRIOT Act has been the fact that, thank goodness, America has not suffered another horrific event like 9/11 since that terrible day some 2½ years ago.

I might add we have also been successful in freezing some of the funding that has been essential to financing terrorism around the world. In fact, the PATRIOT Act has allowed us to freeze more than $200 million in funds from organizations that have been sponsoring and funding international terrorism.

Particularly, last week, I guess it was, when we heard the testimony of the former FBI Director Louis Freeh, the former Attorney General Janet Reno, and the current Attorney General John Ashcroft, the American people became introduced more or less the same way that law students are to fundamental principles of law enforcement and due process. Even more than that, the American people were introduced to something that was referred to as ''the wall.''

The wall was the subject of a 1995 memo by Jamie Gorelick, then Deputy Attorney General, now on the 9/11 Commission. Indeed, as she has pointed out, the wall between our antiterrorism and intelligence-gathering efforts and our law enforcement efforts has been longstanding. But it is not a matter that is constitutionally required; it is something the American Government had done to itself. It is a limitation that Congress had placed on information sharing between law enforcement officials. Some only investigate crimes after they have occurred, trying to root out the guilty and then to convict the guilty of the crimes they have committed. The wall is between those law enforcement officials and those intelligence agencies, counterterrorism officials whose job it is to prevent a terrorist attack from even occurring and to preempt that terrible event from occurring. So it was through the PATRIOT Act that we saw this wall come down that has been so important to information sharing.

Indeed, this is not a partisan issue. Attorney General Janet Reno said just a few short days ago, on April 13, with respect to the problems of information sharing within the FBI and other Federal officials, that:

Many of these issues will be or have been resolved by the passage of the PATRIOT Act or other statements.

Indeed, to my recollection, that is not the same words but essentially the same testimony that was presented by former FBI Director Louis Freeh. Former FBI Director Louis Freeh, who served during the previous administration, in talking about this wall that had been brought down as a result of the PATRIOT Act said:

. . . the wall is not an appropriate one with respect to counterterrorism, and that's been repaired both by the PATRIOT Act and the court of review.

I believe the court of review he is referring to is the Foreign Intelligence Surveillance Act, which creates a court of seven Federal judges who review requests for various intelligence mechanisms that try to make sure or, in fact, do make sure as much as is humanly possible that the rights of people who are accused of crimes are not unfairly jeopardized in this process.

The point is that the wall that had been erected separating our law enforcement personnel and preventing them from sharing information with our counterterrorism officials has now been torn down and we now allow information sharing which, indeed, has made America safer.

The PATRIOT Act specifically makes it easier to track terrorists in the digital age. When journalist Daniel Pearl of the Wall Street Journal was kidnapped in Pakistan, the terrorists made the mistake, as it turned out, of sending the ransom demands by e-mail. The PATRIOT Act, having brought our laws into the information age, allowed investigators to quickly obtain essential information from the Internet service provider that the terrorists were using. This in turn led them to cybercafes in Pakistan and then to some of Daniel Pearl's killers, who are now in prison thanks to the expanded tools provided by the PATRIOT Act.

Some have worried aloud that we are jeopardizing our civil liberties by creating a law which allows expanded authority to law enforcement and counterterrorism authorities. But what many people don't understand, or don't know—there is no reason they should know other than the fact that they have now learned more about it—is the PATRIOT Act actually applies tools that have already been in use in other contexts. For example, before September 11, investigators had better tools to fight organized crime than they did to fight terrorism. For example, for years law enforcement officials used roving wiretaps to investigate organized crime. I think it was Senator JOE BIDEN who said if roving wiretaps are good enough for the mob, then they are good enough for terrorists. He, of course, advocated, as many on this floor did, for that. Here is a copy of his remarks. I paraphrased it. Let's go to the exact quote. He said:

. . . the FBI could get a wiretap to investigate the Mafia, but they could not get one to investigate terrorists. To put it bluntly, that was crazy. What's good for the Mob should be good for terrorists.

Those are statements with which I agreed, made by Senator JOE BIDEN on October 25, 2001, which I submit were true then and remain true today.

I already mentioned that aspect of the PATRIOT Act which has made it easier for us to cut off the financial support that has been used to support terrorist acts. Osama bin Laden, when he first left Saudi Arabia and went to Afghanistan as part of the anti-Communist Jihad, after the Soviets invaded Afghanistan, he and other Jihadists declared holy war against the Soviets at the time. The way he got started in his terrorist activities was financially supporting the acts of other Jihadists, other Muslim extremists. At that time, he directed their fire at the Soviet Union until, of course, the Soviet Union left Afghanistan. Then they turned their fire on America and other freedom-loving countries.

My point is, getting at the financial support for terror was very important. Indeed, the PATRIOT Act has made it much easier to get to that and was responsible for capturing some $200 million in terrorist financing, which has been very important.

One of the things that has concerned me, and no doubt others, about the PATRIOT Act has been the way people have used the PATRIOT Act as almost a dirty word. It has been used to scare people. It has been used to mislead people about what the act does. It is important to understand what the act does and what it does not do.

It has also been used to raise money. This is part of the scare campaign the American people deserve to know about and we as Members of this body need to remind ourselves of and make ourselves aware of. I happened to get a solicitation from the American Civil Liberties Union at my home. This is an excerpt. It caught my eye because I thought, now I understand why there are so many people who are misled and frightened by the PATRIOT Act because there are organizations such as the ACLU that are misleading people about what it does. They are using that fear to raise money. We know one of the strongest motivations there is for human beings is to scare them. Indeed, that is exactly what is happening by misleading the American people about what the PATRIOT Act does, by organizations such as the ACLU.

This solicitation letter I received at my residence said in part:

We need your immediate help to stop radical anti-liberty proposals from becoming radical anti-liberty laws of the land with Congress' and the White House' seal of approval.

Indeed, that sort of statement is not alone. We have another chart that talks specifically about the PATRIOT Act, and another excerpt from the same solicitation by the ACLU:

The USA PATRIOT Act expands terrorism laws to include ''domestic terrorism'' which could subject political organizations to surveillance, wiretapping, harassment, and criminal action for political advocacy.

If that were true, I would be standing and saying we need to look at this twice. We need to do something about it. We need to look further to see whether perhaps we have done something wrong or it needs correction or review.

I was at a hearing of a subcommittee of the Senate Judiciary Committee, and Senator FEINSTEIN put her finger on this and pointed out the kind of hysterical scare tactics the ACLU and others have used in mischaracterizing what the PATRIOT Act does are flatly unfounded. I was there at this hearing, but I had the statement made into a chart so the quote is clear. Senator FEINSTEIN, to her credit, is always a Senator who does her homework. She does her homework in every case, sometimes to my aggravation when she is on the other side of an issue, but sometimes I am glad she does. This is a case where I am glad she did her homework as she always does.

I have never had a single abuse of the PATRIOT Act reported to me.

She was not just sitting passively back waiting for people to write or call as they do to our offices to complain or to register some concern about legislation or some Federal activity.

She went on to say:

My staff e-mailed the ACLU and asked them for instances of actual abuses. They e-mailed back and said they had none.

It is very disturbing that the same organization that mails solicitations to houses of not just Members of Congress but to people all across America, trying to frighten them, mislead them, and scare them into believing Congress has acted without concern for civil liberties or perhaps some law we passed has been abused by Attorney General John Ashcroft and others, when, in fact, it is just not true. Everyone should be concerned about that. It ought to be exposed for what it is.

Notwithstanding the comments of people like Senator BIDEN, who supports the PATRIOT Act, Senator FEINSTEIN, who has done this investigation to find out whether, in fact, there has been abuse—and there has been none reported, even when asked for examples to support their scare tactics—there are some now who say it is time to eliminate the PATRIOT Act or to replace it, using other similar scare tactics.

I might point out this is not limited to the Congress. I had my staff refresh my recollection because I had remembered—indeed, the Presiding Officer may remember, too—there are press reports about city councils around the United States that passed resolutions condemning the PATRIOT Act based on the disinformation and scare tactics the ACLU and others have used to mislead them about whether there was, indeed, a threat to the civil liberties of their constituents. In fact, 287 local governments across the United States

of America have passed such resolutions condemning the PATRIOT Act. I am sad to say, three of those were in Texas: If my recollection is correct, the Dallas City Council, Austin City Council, and one from a smaller municipality.

So we know at least there is some evidence that the kind of scare tactics and misinformation people have been spreading, people at the ACLU have been spreading, is, unfortunately, working, because not enough people like me and others in this body are standing up and correcting the record and providing the truth.

Unfortunately—it is not unfortunate; it is our system. We have elections for President every 4 years. We have elections for the House every 2 years and every 6 years for the Senate, but it should not be too surprising some of this disinformation and misinformation and scare tactics have gotten into the Presidential campaign.

Indeed, I listened with some concern during the race for the Democratic nomination for President where various candidates for that Democratic nomination for President continued along this line of disinformation, misinformation, and scare tactics specifically regarding the PATRIOT Act. The current nominee for President of the Democratic Party participated in that, what I call ''piling on.'' He said in a speech at Iowa State University:

> So it is time to end the era of John Ashcroft.

Unfortunately, this is an instance, I will interject in the quote, in which Attorney General Ashcroft has been reviled, he has been called all sorts of names, held up as a boogeyman in part of the scare tactic for doing his job, for enforcing the laws Congress has passed and the President has signed. If the Attorney General of the United States of America will not enforce the laws Congress passes and the President signs in order to make America more secure, who will? Thank goodness, we have a courageous individual who is willing to stand up against unwarranted criticism and this sort of misinformation or disinformation campaign and enforce the law Congress passes because he believes, as Congress believed when it passed the law, as the President believed when he signed the law, the PATRIOT Act makes America more secure.

Going back to the quote by Senator KERRY at the Iowa State University:

> So it is time to end the era of John Ashcroft.

He goes on to say:

> That starts with replacing the PATRIOT Act with a new law that protects our people and our liberties at the same time.

He later had an interview on ''Morning Edition'' on National Public Radio on August 18, 2003. He said:

> If you are sensitive to and care about civil liberties, you can make provisions to guarantee that there is not this blind spot in the American justice system that there is today under the Patriot Act.

Unfortunately, this disinformation campaign, which stands in stark contrast to the lack of any evidence that Senator FEINSTEIN found in her investigation about abuses, continues now into the Presidential campaign, now that the Presidential nominee of the Democratic Party has been chosen.

Indeed, this is on Senator KERRY's Web site, John Kerry for President Web site. He said:

> John Ashcroft has used new authority under the Patriot Act to perform ''sneak and peek'' searches without ever notifying anyone and without any judicial oversight.

Well, besides this campaign of disinformation and misinformation and scare tactics, I can assure you neither the Attorney General nor any other United States attorney or Federal law enforcement official can legally perform any kind of search without judicial oversight. That is wrong. It is a false statement.

Even if we pulled this out of all the other contexts I have talked about—the disinformation, the misinformation, and the scare tactics—this is a flat misstatement. I hope Senator KERRY will correct that on his Web site because no search under any kind of warrant can be conducted without the approval of a judge or an impartial magistrate. That is a basic part of our criminal law. But, here again, I am worried that unless people stand up and correct the record, this kind of disinformation will continue.

But the worst part of it is this: Notwithstanding the kind of statements I covered by Senator KERRY and others, these are some of the same people who voted for the PATRIOT Act when it passed. Indeed, on October 25, 2001, Senator KERRY said:

> I am pleased at the compromise we have reached on the antiterrorism legislation, as a whole, which includes the sunset provision on the wiretapping and electronic surveillance component.

Then later, more specifically to the subject at hand, this quote is talking generically about the laws that changed included in the PATRIOT Act and others. But he was interviewed on Fox News on October 25, 2001. John Gibson of Fox News said:

> Senator KERRY, today, Attorney General Ashcroft said that terrorists have reason to be afraid, very afraid of this new terror legislation. Why? What's in it that has so much sharper teeth?

Senator KERRY said:

> It streamlines the ability of law enforcement to do its job. It modernizes our ability to fight crime.

Well, I agree with the comments of Senator KERRY in October of 2001 about the benefits of the PATRIOT Act. And I disagree with the comments Senator KERRY—the same person—made when he decided to run for President, and now that he is a Presidential nominee, where he is using the misinformation, this disinformation, these scare tactics, unfortunately, in contrast to the lack of evidence Senator FEINSTEIN was able to glean from even the ACLU about any evidence of abuses.

The fact is, the PATRIOT Act has made America a safer place. And no political campaign, no fundraising goal justifies misleading the American people about what is good about the PATRIOT Act and how it has contributed to bringing down this wall separating law enforcement and counterterrorism officials from sharing information. Indeed, as I said, the best evidence about why the PATRIOT Act is good law, good public policy, is the fact we have not been hit like we were on 9/11. Thank God for that. I know, of course, we hope and pray we never will again be hit in that way. But we are not going to be safer if we play politics with our national security, even in a Presidential year when the attraction is so irresistible, it appears, to some.

The PATRIOT Act has made America safer. Janet Reno, John Ashcroft, Louis Freeh, people on both sides of the aisle, people who have put their hand on a Bible and sworn to uphold the laws of the United States of America, to protect the Constitution—these are people who have testified under oath the PATRIOT Act has made America safer.

So I say, let's not play politics with this important law. Let's not play politics and risk American lives by continuing the disinformation and misinformation and the scare tactics to the point where we would go back and eliminate or revise or neuter this important protection which has made our country so much safer.

So, Mr. President, with that, I would like to turn to some additional matters on behalf of the majority leader.

I see Senator REID on the floor. At this time, on behalf of the majority leader, I would ask——

Mr. REID addressed the Chair.

The PRESIDING OFFICER (Mr. ALEXANDER). The assistant Democratic leader.

Mr. REID. If the Senator would yield for a comment?

Mr. CORNYN. I would be happy to yield.

Mr. REID. The staffs are not quite ready to do the close yet. They should be ready in a matter of a few minutes. So if the Senator would allow us a few more minutes?

Mr. CORNYN. Under the circumstances, Mr. President, I ask——

Mr. REID. I will make a statement that will take a couple minutes. Senator DASCHLE is going to make a statement. We can go ahead and do the close, and he can speak after the close, but we are not quite ready on this side to close. It will take another few minutes.

Mr. President, if the Senator will yield for me to make a very brief statement?

Mr. CORNYN. I will be glad to yield.

The PRESIDING OFFICER. The assistant Democratic leader.

PATRIOT ACT

Mr. REID. Mr. President, I would agree with my friend, the former attorney general of Texas, the PATRIOT

Act has made America a safer place. I think that is a fair statement. But I would also say the PATRIOT Act is something we have to watch very closely. We realized when we passed this legislation there may be provisions in it that went too far, not far enough. As a result of that, we have put a provision in this very important bill, the PATRIOT Act, that it would sunset; that if we did not renew that legislation, it would fail; therefore, next year we have to renew this act.

I am confident, based on what is going on around the country, in spite of the statement from the American Civil Liberties Union—we can look to Las Vegas, my home, on one criminal prosecution, what the authorities did there. It is my understanding they used the PATRIOT Act. A person bought a car with global positioning in it. The reason they bought that, of course, is in case something went wrong you could press a button and come and find out where the car is, or, if it was an emergency, someone trying to hijack the car, emergency authorities would be notified. The person never realized law enforcement authorities could focus on that vehicle and listen to everything that went on in that car. That is what they did.

I would have to think without getting a judge's order, without doing some things in addition to what I have described, that was probably going a little too far. The point being, the PATRIOT Act is something we need to take a look at. That is why we have this legislation that will sunset.

I hope the Judiciary Committee and other committees that believe they have jurisdiction will begin as soon as possible taking a look at this legislation to see if there are provisions that should be revised, eliminated, added to. I don't think we need to criticize Senator KERRY because he thinks we need to take a look at the PATRIOT Act. I believe we do, and that is certainly appropriate. The Senate agreed. That is why we included a sunset provision in this most important legislation.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CRAPO. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

## UNANIMOUS CONSENT REQUEST—S.J. RES. 1

Mr. CRAPO. Mr. President, on behalf of the majority leader, I ask unanimous consent that at a time determined by the majority leader, after consultation with the Democratic leader, the Senate proceed to the consideration of Calendar No. 271, S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. CRAPO. Mr. President, the majority leader has been attempting to clear this request to allow us to proceed to the consideration of the constitutional rights for victims resolution. Given the objection, and on behalf of the majority leader, I now ask unanimous consent to withdraw the request.

The PRESIDING OFFICER. Without objection, it is so ordered.

## CONSTITUTIONAL AMENDMENT TO PROTECT THE RIGHTS OF CRIME VICTIMS—MOTION TO PROCEED

### CLOTURE MOTION

Mr. CRAPO. Mr. President, I now move to proceed to S.J. Res. 1, and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 271, S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

Bill Frist, Jon Kyl, Gordon Smith, Ted Stevens, Trent Lott, Kay Bailey Hutchison, Susan Collins, Pete Domenici, Rick Santorum, George Allen, John Ensign, Wayne Allard, Mitch McConnell, Jim Inhofe, C. Grassley, Mike DeWine.

Mr. CRAPO. Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CRAPO. I now withdraw my motion.

The PRESIDING OFFICER. The motion is withdrawn.

## MORNING BUSINESS

Mr. CRAPO. Mr. President, I ask unanimous consent that the Senate now proceed to a period of morning business with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

## EQUAL PAY DAY

Mr. REID. Mr. President, today, April 20th, is being observed as Equal Pay Day.

I wish I could say it is a celebration of Equal Pay for women. But it isn't.

Instead, this day symbolizes the fact that women continue to earn only 77 percent as much as men, 77 cents on the dollar.

Today, April 20, marks how many extra days a woman has to work to earn as much money as a man earned last year.

Women are paid less than men even when they have the same experience, the same education, the same skills, and live in the same parts of the country.

And they are paid less for doing the same jobs.

For example, women lawyers and women doctors both have median weekly earnings that are nearly $500 less than those of male lawyers and doctors.

Women food service supervisors are paid about $100 less each week than men in the same job, and waitresses earn about $50 less than waiters.

Women professors' weekly earnings are nearly $300 less each week than men's, and the median weekly salary for women elementary school teachers is $70 per week less than that of male elementary school teachers.

When women are short-changed in their paychecks, it doesn't just hurt them. It hurts their whole family, including their children and spouses.

Lower pay for women means a family can't afford as nice of a home, or give their children the same opportunities, as they could if women were paid as much as men.

If married women were paid the same as comparable men, their family incomes would rise by nearly 6 percent. And the poverty rate among families of working women would decline from 2.1 percent to 0.8 percent.

On average, every working family loses $4,000 every year because of unequal pay for women.

If single working mothers earned as much as comparable men, their family incomes would increase by nearly 17 percent, and their poverty rates would be cut in half, from 25.3 percent to 12.6 percent.

If single women earned as much as comparable men, their incomes would rise by 13.4 percent and their poverty rate would fall from 6.3 percent to 1 percent.

Women lose 23 cents on the dollar compared to men—almost a quarter.

Over a lifetime of work, that 23 cents adds up fast. It adds up to real money.

For an average 25-year old working woman, it adds up to about $523,000 during her working life. That's more than a half-million dollars less than a man will be paid.

Because women are paid less when they work, they can't save as much toward their retirement. Half of all older women who received a private pension in 1998 got less than $3,486 per year, compared with $7,020 per year for older men. In other words, the pensions for women were less than half of the pensions for men.

The figures are even worse for women of color. African-American women earn only 67 cents and Latinas 55 cents for every dollar that men earn. Asian Pacific American women still earn only 83.5 cents on the dollar compared to men's salaries.